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SENATE

REPORT
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NATIONAL AMERICAN INDIAN MUSEUM AND MEMORIAL ACT

AUGUST 25, 1988.—Ordered to be printed

Filed, under authority of the order of the Senate of August 11 (legislative day, August 10), 1988

Mr. INOUYE, from the Select Committee on Indian Affairs, and on behalf of Mr. FORD, from the Committee on Rules and Administration, submitted the following

REPORT

[To accompany S. 1722]

The Select Committee on Indian Affairs and the Committee on Rules and Administration to which was jointly referred the bill (S. 1722) to authorize the establishment of the National Museum of the American Indian, Heye Foundation within the Smithsonian Institution, and to establish a memorial to the American Indian, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 1722, the National American Indian Museum and Memorial Act, is to establish a national museum and memorial to the American Indian within the Smithsonian Institution; to provide for the transfer of the Smithsonian's Native American collection from the Smithsonian Natural History Museum to the National Museum of the American Indian; to provide for the transfer of Native American skeletal remains from the Smithsonian Natural History Museum to the National Museum of the American Indian; and to provide access to significant and exemplary Native American artifacts and objects of art of the Museum of the American Indian, Heye Foundation.

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BACKGROUND

In the first seventy years of the nineteenth century, the Federal government was actively engaged in conquering the Indian nations. Toward the conclusion of what history later termed the Indian Wars Era, the Army Surgeon General of the United States issued an order in 1868 instructing Army medical officers to collect specimens of Indian crania for the Army Medical Museum. The Army Medical Museum later transferred the collection of Indian skeletal remains gathered pursuant to the Surgeon General's order to the Smithsonian Institution.

In his February 20, 1987 testimony before the Select Committee on Indian Affairs on S. 187, a bill to provide for the repatriation of Indian artifacts, Smithsonian Secretary Adams indicated that of the 34,000 specimens currently in the Institution's collection, approximately 42.5% or 14,523 of the specimens are the remains of North American Indians, and another 11.9% or 4,061 of the specimens represent Eskimo, Aleut, and Koniag populations. Tribal reaction to Secretary Adams' testimony was swift, and in the months which followed, Indian tribes around the country called for the repatriation of those skeletal remains that could be identified as associated with a specific tribe or region for their permanent disposition in accordance with tribal customs and traditions, and for the proper burial elsewhere of those remains of Native Americans that could not be so identified.

In response to the tribal initiatives, Senator Daniel K. Inouye, Chairman of the Senate Select Committee on Indian Affairs, met with representatives of the National Capital Planning Commission to explore the feasibility of establishing a memorial to the American Indian on the national mall that could serve as a permanent resting place for those skeletal remains of Native Americans in the Smithsonian's collection which were not the subject of ongoing scientific inquiry, and which could not be identified with a specific tribe or region of Indian country. Chairman Inouye was advised that the last remaining site on the mall has been reserved for the use of the Smithsonian Institution.

Learning of the Chairman's interest in establishing a memorial to the American Indian which might also include the establishment of an American Indian museum, the former Chairman of the Board of Trustees of the Museum of the American Indian, Heye Foundation of New York, the Honorable Barber Conable, invited Senator Inouye to visit the facilities of the Museum of the American Indian in New York. Chairman Inouye toured the Museum and the Museum's research branch in April of 1987, accompanied by Smithsonian Secretary Adams and staff, and met with representatives of the Heye Museum's Board of Trustees.

The Museum of the American Indian was created by the trust indenture of the late George Gustav Heye, established in 1916 to provide for the preservation of his personal collection of over one million Native American artifacts collected over a period of sixty years. Although Mr. Heye also endowed the trust with a sum from which accrued interest could be used to maintain the collection, the endowment was insufficient to cover the costs of the Museum's operation, and during Heye's lifetime, he supplemented the endow-

ment with personal funds. Today, the collection has doubled in size, and the income from the trust (approximately $400,000 annually) is inadequate to meet the Museum's annual operating costs of $1.5 million. Private financial support to supplement the Museum's resources has also been insufficient to assure that the collection can be adequately preserved, and there is concern that many priceless artifacts are approaching an irreversible state of deterioration. The Museum's current facilities, located in west Harlem, provide display capacity for approximately four percent of the collection, while over 95 percent of the collection is housed in the Museum's research branch, located in a warehouse in the Bronx.

Following discussions with the Smithsonian Secretary Robert McCormick Adams and the Heye Museum's Board of Trustees, Senator Inouye introduced a bill (S. 1722) on September 25, 1987 to establish a National Museum of the American Indian within the Smithsonian Institution on the national mall in Washington, D.C., and to establish within the museum, a living memorial to the American Indian. The bill provided authority for the transfer of title to the collection of the Museum of the American Indian, Heye Foundation of New York from the Heye Foundation to the Smithsonian Institution, and also authorized the transfer of the Smithsonian's own substantial Native American collection from the National Museum of Natural History to the National Museum of the American Indian. The bill further provided authority for the Smithsonian to operate an exhibition facility in the Old U.S. Custom House located in the City of New York, through which it was anticipated the combined Native American collection (Heye and Smithsonian collections) of the National Museum of the American Indian would be exhibited on a rotating basis. S. 1722 was jointly referred to the Select Committee on Indian Affairs and the Committee on Rules and Administration.

Also on September 25, 1987, Senator Jeff Bingaman of New Mexico introduced a bill (S. 1723) to establish regional museums that were to be affiliates of the National Museum of the American Indian. S. 1723 was referred to the Select Committee on Indian Affairs.

COMMITTEES' ACTION

Joint hearings of the Committee on Rules and Administration and the Select Committee on Indian Affairs on S. 1722 and S. 1723 were held on November 12, 1987, and November 18, 1987. Testimony received by the committees from the Lieutenant Governor of the State of New York, the New York State Attorney General, the Mayor of the City of New York, the Manhattan Borough President's office, and members of the New York congressional delegation revealed strong New York opposition to the proposal to transfer title to the Heye collection to the Smithsonian Institution, and the provisions of the bill that contemplated the housing of the Heye collection in the Smithsonian's National Musuem of the American Indian and related facilities. Testimony received from the Smithsonian Institution's Board of Regents; the National Capital Planning Commission; the Museum of the American Indian, Heye Foundation; Indian tribal government officials and leaders of

Indian communities generally supported enactment of the legislation.

Discussions with the New York congressional delegation, representatives of the New York State Governor's and Attorney General's offices, the New York City Mayor's office, the New York Congressional delegation, the Smithsonian Institution, and the Heye Foundation were pursued in the months following the hearings, and on April 11, 1988, Senator Daniel Patrick Moynihan and Senator Daniel K. Inouye announced that a compromise had been reached to accommodate the concerns of the New York parties. That compromise, which was formulated as an amendment in the nature of a substitute to S. 1722, was considered by the Select Committee on Indian Affairs and ordered reported to the Senate on April 13, 1988.

The Committee on Rules and Administration met on April 19, 1988, to consider an amendment in the nature of a substitute to S. 1722. Senator Inouye described the provisions of the amended bill, which he hoped the Committee would approve since it would grant to the Smithsonian Institution and the new National Museum of the American Indian unlimited access to the Heye Foundation collection. He noted that this would be just the first of many steps that needed to be taken to establish the new museum, but that action was necessary in this Congress because the usual contributors to the Heye Foundation were holding back pending the outcome of the on-going negotiations with the Smithsonian Institution.

There were discussions concerning the cost of this project to the Federal government, the wisdom of providing for a museum in New York City in addition to the one on the Mall in Washington, D.C., and the fact that the vastly important Heye Foundation collection is at present not being seen by the public. Following that, the amended bill passed by a record vote of 7-2 and was ordered reported favorably by the Committee.

RULES COMMITTEE ROLLCALL VOTE

In compliance with paragraph 7 (b) and (c) of Rule XXVI of the Standing Rules of the Senate, the record of the rollcall vote in the Committee on Rules and Administration during its consideration of S. 1722, to report it favorably, as amended,

YEAS—7	NAYS—2
Mr. Inouye	Mr. Stevens
Mr. DeConcini	Mr. McClure
Mr. Moynihan	
Mr. Adams	
Mr. Warner	
Mr. Garn	
Mr. Ford	
By proxy:	
Mr. Dodd	Mr. Helms

The Smithsonian Institution announced its opposition to the amendment in the nature of a substitute to S. 1722 in an April 12, 1988 letter to Indian Affairs Committee Chairman Daniel K. Inouye and in an April 18, 1988 letter to Senate Rules Committee

Chairman Wendell Ford. (The referenced letters are set forth in the Executive Communications section of this report.) In response to the Smithsonian opposition, Senator Inouye announced at the April 19, 1988 mark-up of S. 1722 in the Committee on Rules and Administration, that he would not seek Senate action on the bill until every effort had been undertaken to address the concerns expressed by the Smithsonian Institution. Senator Garn explained his vote not as an approval of the bill, but rather the concept of the bill, and based on the above assurance of Senator Inouye.

In fulfillment of that commitment and at the invitation of Senator Moynihan, a member of the Smithsonian Institution's Board of Regents, Senator Inouye attended the May 9, 1988 meeting of the Board of Regents to discuss the provisions of the substitute amendment. Following the discussion, the Board of Regents adopted a resolution directing the Institution's Executive Committee to continue negotiations with the Heye Foundation on an affiliation agreement between the two museums pursuant to the provisions of the substitute amendment to S. 1722.

On June 28, 1988, the Executive Committee of the Smithsonian Institution's Board of Regents submitted a position statement on the National Museum of the American Indian to each member of the Board of Regents, which is contained in the Executive Communications section of this report. The position statement concludes that there "are substantial and compelling reasons for the Regents not to support those features of S. 1722 that are concerned with the construction of a National Museum of the American Indian in Washington. * * * We do offer every encouragement, however, that the proposal to transfer the Custom House to the Museum of the American Indian, Heye Foundation, be expeditiously brought forward for Congressional action." The Board of Regents will formally consider the Executive Committee's position statement at the September 19, 1988 meeting of the Board of Regents.

SUMMARY OF MAJOR PROVISIONS OF THE SUBSTITUTE AMENDMENT TO S. 1722

I. Establishment of the National Museum of the American Indian as a Federally-chartered institution to be administered and operated by the Smithsonian Institution on the National Mall in Washington, DC.

A. Governance Structure: The National Museum of the American Indian Board of Trustees will report to the Smithsonian Board of Regents, but is otherwise responsible for:

(1) providing for the temporary or permanent acquisition of significant and exemplary Native American objects and artifacts from the Heye Museum pursuant to an affiliation agreement with the Heye Museum;

(2) providing for the temporary or permanent acquisition of Native American objects and artifacts from other museums or private collectors;

(3) providing for the exhibition of objects and artifacts from either the National Museum of the American Indian or the Heye Museum in regional facilities of National Museum of the American Indian;

(4) providing for the preservation, restoration and maintenance of objects and artifacts in the collection of National Museum of the American Indian;

(5) in consultation with and subject to the approval of the Heye Museum's Board of Trustees, providing for preservation, restoration and maintenance of objects and artifacts on loan from the Heye Museum;

(6) conducting programs of research and evaluation;

(7) conducting educational programs; and

(8) determining policy as to the method of display of the artifacts from the National Museum of the American Indian collection and from the Heye Museum's collection.

B. Transfer of the Native American collection of the Smithsonian's National Museum of Natural History to National Museum of the American Indian.

C. Transfer of Native American skeletal remains from the Smithsonian's National Museum of Natural History to National Museum of the American Indian.

D. Creation of an Indian Task Force to study and make recommendations to the National Museum's Board of Trustees and the Smithsonian's Board of Regents as to the disposition of Native American skeletal remains in the custody of National Museum of the American Indian.

E. Establishment of regional facilities of National Museum of the American Indian.

II. Affiliation Agreement between the National Museum of the American Indian and Heye Museum

A. National Museum of the American Indian access to significant and exemplary objects in Heye Museum collection in exchange for which a long-term lease of the Custom House would be authorized for the Heye Museum.

B. National Museum of the American Indian right of first refusal as to the deaccessioning and sale or other permanent disposition of Native American objects and artifacts from the Heye Museum collection.

C. National Museum of the American Indian representative on Heye Museum's Board of Trustees.

D. Cost sharing arrangement for exhibition of Native American objects and artifacts from the Heye Museum collection in National Museum of the American Indian regional facilities.

E. Heye Museum access to Native American objects and artifacts from the collection of the National Museum of the American Indian.

F. Agreement as to the allocation of monies derived from fundraising efforts to benefit the Native American collections of National Museum of the American Indian or Heye Museum.

G. Reciprocal right of inspection of the National Museum of the American Indian and Heye Museum Native American collections at any time with election to report to Congress.

III. Long-Term Contract between the United States and the Heye Museum

A. Contract to authorize the lease of the U.S. Custom House from the General Services Administration to the Heye Museum for a 99 year term.

B. Consideration constituting fair market value for lease is the benefits received pursuant to (1) a contract between the National Musueum of the American Indian and the Heye Museum, and (2) a contract to which the United States, the Heye Musuem, the State of New York and the City of New York are parties.

C. Contract to which the United States, Heye Museum, the State of New York and the City of New York are parties, that establishes the financial commitment of the City of New York and the State of New York for a fixed percentage of the capital construction costs associated with the Heye Musuem's occupancy of the U.S. Custom House, and the financial commitment of the City of the New York and the State of New York for a fixed percentage of the operating costs of the Heye Museum.

IV. New York Facilities

A. Maintenance of existing Heye Musuem exhibition facility at Audubon Terrace location.

B. Transfer of all property currently housed in the Heye Musuem's research facility to the U.S. Custom House.

C. Transfer of all property currently housed in the Heye Museum's library facility to the U.S. Custom House.

SECTION-BY-SECTION ANALYSIS

Section 1. Section 1 provides that the Act may be cited as the National American Indian Museum and Memorial Act.

Section 2. Section 2 contains the findings of Congress that there is no national museum devoted exclusively to the history and art of cultures indigenous to North America, specifically Indians, Eskimos, and Aleuts; that none of Smithsonian Institution's 14 museums and galleries or 5 major research facilities are devoted to Native American art and history; that the Museum of the American Indian, Heye Foundation of New York has an unequalled assemblage of over 1,000,000 Indian art objects and artifacts and is the largest such collection in the world; that the library of the Museum of the American Indian, Heye Foundation houses 40,000 volumes relating to the archaeology, ethnology, and history of Native American peoples; that the collection of the Museum of the American Indian, Heye Foundation, of art, artifacts, specimens and books is inadequately housed in 3 separate facilities totalling 90,000 square feet, with 95 percent of the collection of art and artifacts stored in 20,000 square feet and the collection of books kept in a 15,000 square foot library; that the collection of the Museum of the American Indian, Heye Foundation needs a minimum of 400,000 square feet to adequately exhibit and store art and artifacts and to provide space for scholars and researchers; that the sharing of the collection of the Museum of the American Indian, Heye Foundation, with the Smithsonian Institution would create an institution whose capabilities for exhibition and research would be unrivaled

in scope and would give all Americans the opportunity to learn of the cultural legacy and historic grandeur of the American Indian people; and provide a meeting place for scholars, a significant, national facility for the exhibition of Indian art and artifacts, a stage for the performing arts, curation and other learning opportunities for American Indian people, and traveling exhibitions to other areas of the country; that approximately 300 skeletal remains of Indians were collected from battlefields and burial grounds and sent to the Army Medical Museum by order of the Surgeon General of the United States Army and were afterwards transferred to the Smithsonian Institution where they are still stored; that the Smithsonian Institution has acquired a vast collection of Indian skeletal remains through archaeological excavations, transfers from the United States Army of specimens collected during the Indian wars era, and donations from private individuals and museums; that the existence of this collection has been estimated to contain the remains of approximately 18,000 Indians, Eskimos, and Aleuts and has concerned many Indian tribes and bands who are determined to provide an appropriate resting place for their ancestors; that a national memorial should be constructed in a suitable location on the Mall in the District of Columbia for the purpose of commemorating and memorializing those Indian nations that have disappeared in the process of European settlement on this continent, and recognizing the Indian tribes and nations that live on their ancestral lands within the United States and acknowledging their historical contribution to American society; that an extraordinary site on the National Mall in the District of Columbia (U.S. Government Reservation No. 6) which has been reserved for the use of the Smithsonian Institution is available for construction of a suitable building to permanently house the collection of the National Museum of the American Indian, and that portion of the collection of the Museum of the American Indian, Heye Foundation, on loan to the National Museum of the American Indian; that the site may also contain a memorial to inter the remains of American Indians and Alaska Natives whose tribal affiliation is not capable of identification and whose remains are also unsuited for scientific inquiry; and that in order to enrich our appreciation of the cultural achievements of Indian people, it is necessary to create a national system of regional facilities where there artifacts can be properly displayed and appreciated.

Section 3. Section 3 sets forth the definitions of terms for the purposes of this Act.

Section 3(1). Section 3(1) provides that the term "Indian" means a person who is a member of an Indian tribe, including any individual who is an Alaska Native.

Section 3(2). Section 3(2) provides that the term "Alaska Native" means any Eskimo, Aleut, Alaska Indian, Inuit, or Inupiat.

Section 3(3). Section 3(3) provides that the term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village as defined in, or established pursuant to the Alaska Native Claims Settlement Act.

Title I—National Museum of the American Indian

Section 101(a). Section 101(a) provides authority for and directs that within the Smithsonian Institution, there is to be established a living memorial to American Indian people and their traditions which is to be known as the National Museum of the American Indian. Section 101(a) further provides that hereafter, the National Museum of the American Indian is to be referred to in the Act as the Museum.

Section 101(a)(1). Section 101(a)(1) provides that the National Museum of the American Indian shall provide for the advancement of the study of the Native peoples of the Americas and the study of their literature, history, art, and life.

Section 101(a)(2). Section 101(a)(2) provides that the National Museum of the American Indian shall provide for the collection, preservation, and exhibition of objects of artistic, historic, literary, and scientific interest related to the advancement of the study of the Native peoples of the Americas and the study of their language, literature, histroy, art, and life.

Section 101(a)(3). Section 101(a)(3) provides that the National Museum of the American Indian shall provide for programs of research and study related to the advancement of the study of the Native peoples of the Americas and the study of their language, literature, history, art, and life.

Section 101(b). Section 101(b) provides that the area bounded by Third Street, Maryland Avenue, Independence Avenue, Fourth Street, and Jefferson Drive in the District of Columbia is appropriated to the Smithsonian Institution as the permanent site of the National Museum of the American Indian.

Section 101(c). Section 101(c) authorizes the Board of Regents to conduct certain enumerated activities, in addition to those powers and authorities already delegated to the Smithsonian Board of Regents.

Section 101(c)(1). Section 101(c)(1) authorizes the Smithsonian Institution's Board of Regents to prepare architectural and engineering designs, plans, and specifications, building of at least 400,000 square feet in size to house the National Museum of the American Indian.

Section 101(c)(2). Section 101(c)(2) authorizes and directs the Smithsonian Institution's Board of Regents to transfer the Native American collection of the Smithsonian Institution's Museum of Natural History to the National Museum of the American Indian.

Section 101(c)(3). Section 101(c)(3) authorizes the Smithsonian Institution's Board of Regents to purchase or otherwise provide for the permanent acquisition of Native American objects and artifacts from the Museum of the American Indian, Heye Foundation pursuant to an affiliation agreement that is to be entered into between the National Museum of the American Indian and the Museum of the American Indian, Heye Foundation. Section 101(c)(3) further provides that hereafter in the Act, the Museum of the American Indian, Heye Foundation is to be referred to as the Heye Museum. Section 101(c)(3) also provides that the affiliation agreement, as it is described in section 301 of the Act, is hereafter to be referred to in the Act as the affiliation agreement.

Section 101(c)(4). Section 101(c)(4) authorizes the Smithsonian Institution's Board of Regents to purchase, accept, borrow, or otherwise provide for the temporary or permanent acquisition of Native American objects and artifacts from other museums or private collections.

Section 101(c)(5). Section 101(c)(5) authorizes the Smithsonian Institution's Board of Regents to preserve, maintain, restore, loan, or exchange objects and artifacts in the collection of the National Museum of the American Indian.

Section 101(c)(6). Section 101(c)(6) authorizes the Smithsonian Institution's Board of Regents to preserve, maintain, restore, or loan objects and artifacts on loan from the Museum of the American Indian, Heye Foundation subject to the provisions of the affiliation agreement between the National Museum of the American Indian and the Museum of the American Indian, Heye Foundation.

Section 102(a). Section 102(a) establishes a Board of Trustees within the Smithsonian Institution to be known as the Trustees of the National Museum of the American Indian. Section 102(a) further provides that the Board of Trustees of the National Museum of the American Indian is to be referred to hereafter in the Act as the Board of Trustees.

Section 102(a)(1). Section 102(a)(1) directs the Board of Trustees of the National Museum of the American Indian to provide advice and assistance to the Smithsonian Institution's Board of Regents on all matters relating to the administration, operation, maintenance, and preservation of the National Museum of the American Indian.

Section 102(a)(2)(A). Section 102(a)(2)(A) establishes the authority of the Board of Trustees of the National Museum of the American Indian to accept, borrow, or otherwise provide for the temporary acquisition of Native American objects and artifacts from the Museum of the American Indian, Heye Foundation subject to the provisions of the affiliation agreement between the National Museum of the American Indian and the Museum of the American Indian, Heye Foundation.

Section 102(a)(2)(B). Section 102(a)(2)(B) establishes the authority of the Board of Trustees of the National Museum of the American Indian to provide for the exhibition of Native American objects and artifacts from the collection of the National Museum of the American Indian, and from the collection of the Museum of the American Indian, Heye Foundation in regional facilities of the National Museum of the American Indian.

Section 102(a)(2)(C). Section 102(a)(2)(C) establishes the authority of the Board of Trustees of the National Museum of the American Indian to conduct programs of research and evaluation with respect to the collection in the National Museum of the American Indian.

Section 102(a)(2)(D). Section 102(a)(2)(D) establishes the authority of the Board of Trustees of the National Museum of the American Indian to conduct educational programs with respect to the collection of the National Museum of the American Indian.

Section 102(a)(2)(E). Section 102(a)(2)(E) establishes the authority of the Board of Trustees of the National Museum of the American Indian to develop and implement policy as to the method of display

of the Native American objects and artifacts in the collection of The National Museum of the American Indian, and subject to the provisions of the affiliation agreement between the National Museum of the American Indian and the Museum of the American Indian, Heye Foundation, to develop and implement policy as to the method of display of the Native American objects and artifacts of the collection of the Museum of the American Indian, Heye Foundation on loan to the National Museum of the American Indian.

Section 102(b). Section 102(b) directs the Board of Trustees of the National Museum of the American Indian to undertake certain enumerated responsibilities.

Section 102(b)(1). Section 102(b)(1) directs the Board of Trustees of the National Museum of the American Indian to adopt bylaws to carry outs its functions.

Section 102(b)(2). Section 102(b)(2) directs the Board of Trustees of the National Museum of the American Indian to designate a chairman from among its members and such other officers as may be provided for in bylaws.

Section 102(b)(3). Section 102(b)(3) directs the Board of Trustees of the National Museum of the American Indian to report annually to the Smithsonian Institution's Board of Regents on the acquisition, disposition, and display of Native American objects and artifacts, and on other matters within its discretion.

Section 102(b)(4). Section 102(b)(4) directs the Board of Trustees of the National Museum of the American Indian to submit an annual report to the Congress which is to include the proceedings of the Board of Trustees of the National Museum of the American Indian and a full account of the financial operations for the preceding fiscal year of the Board of Trustees of the National Museum of the American Indian.

Section 102(c). Section 102(c) establishes the composition of the Board of Trustees of the National Museum of the American Indian.

Section 102(c)(1). Section 102(c)(1) provides that the Secretary of the Interior, the Secretary of the Smithsonian Institution, the Director of the National Endowment for the Humanities, and the Librarian of the Library of Congress are to serve as ex officio, nonvoting members of the Board of Trustees of the National Museum of the American Indian.

Section 102(c)(2). Section 102(c)(2) provides that twenty-four members are to be appointed to serve three-year terms on the Board of Trustees of the National Museum of the American Indian. Section 102(c)(2) further provides that the twenty-four members of the Board of Trustees of the National Museum of the American Indian are to be appointed by the President from a list of recommended nominees provided by the Speaker of the House of Representatives and the President pro tempore of the Senate.

Section 102(c)(3). Section 102(c)(3) provides that thirteen of the twenty-four members appointed by the President to serve on the Board of Trustees of the National Museum of the American Indian are to be of Native American ancestry.

Section 102(c)(4). Section 102(c)(4) provides that at least one of twenty-four members appointed by the President to serve on the Board of Trustees of the National Museum of the American Indian

is to be a member of the Board of Trustees of the Museum of the American Indian, Heye Foundation. Section 102(c)(4) further provides that the member of the Board of Trustees of the Museum of the American Indian, Heye Foundation that is to serve on the Board of Trustees of the National Museum of the American Indian shall serve as an ex officio voting member of the Board of Trustees of the National Museum of the American Indian.

Section 102(d). Section 102(d) provides that members elected to serve on the Board of Trustees of the National Museum of the American Indian, Heye Foundation, or members appointed by the President to serve on the Board of Trustees of the National Museum of the American Indian, shall be eligible to serve on the Board of Trustees of both museums simultaneously.

Section 102(e). Section 102(e) provides that within ninety days of the date of enactment of the Act, the members of the initial Board of Trustees of the National Museum of the American Indian shall be appointed and begin their terms of service.

Section 102(f)(1). Section 102(f)(1) establishes that except as otherwise provided in section 102(f), the term of office of each member of the Board of Trustees of the National Museum of the American Indian shall be three years.

Section 102(f)(2). Section 102(f)(2) provides that the Smithsonian Institution's Board of Regents shall designate the terms of office of each member of the second Board of Trustees of the National Museum of the American Indian at the time each member is appointed.

Section 102(f)(2)(A). Section 102(f)(2)(A) provides that of the members of the second Board of Trustees of the National Museum of the American Indian, one third of the members shall have a term of office of one year.

Section 102(f)(2)(B). Section 102(f)(2)(B) provides that of the members of the second Board of Trustees of the National Museum of the American Indian, one third of the members shall have a term of office of two years.

Section 102(f)(2)(C). Section 102(f)(2)(C) provides that of the members of the second Board of Trustees of the National Museum of the American Indian, one third of the members shall have a term of office of three years.

Section 102(f)(3). Section 102(f)(3) provides that any member of the Board of Trustees of the National Museum of the American Indian appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed, shall be appointed for the remainder of such term.

Section 102(g). Section 102(g) provides that a majority of the members of the Board of Trustees of the National Museum of the American Indian, not including ex officio members, shall constitute a quorum. Section 102(g) further provides that any vacancy in the Board of Trustees of the National Museum of the American Indian shall not affect its power to function.

Section 102(h). Section 102(h) provides authority for members of the Board of Trustees of the National Museum of the American Indian to be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

Section 103(a). Section 103(a) establishes an Executive Committee of the Board of Trustees of the National Museum of the American Indian that is to consist of the designated officers of the Board of Trustees of the National Museum of the American Indian, the ex officio voting member of the Board of Trustees of the National Museum of the American Indian who is a member of the Board of Trustees of the Museum of the American Indian, Heye Foundation, and one member to be appointed by the Smithsonian Institution's Board of Regents. Section 103(a) further provides that the Smithsonian Institution's Board of Regents is to be hereafter referred to in the Act as the Board of Regents.

Section 103(b). Section 103(b) establishes certain enumerated authorities and responsibilities of the Executive Committee of the Board of Trustees of the National Museum of the American Indian.

Section 103(b)(1). Section 103(b)(1) establishes the authority of the Executive Committee of the Board of Trustees of the National Museum of the American Indian to enter into contracts on behalf of the Board of Trustees of the National Museum of the American Indian, subject to the approval of the Board of Trustees of the National Museum of the American Indian.

Section 103(b)(2). Section 103(b)(2) establishes the responsibility of the Executive Committee of the Board of Trustees of the National Museum of the American Indian for the operation and administration of those duties delegated by the Board of Trustees of the National Museum of the American Indian to the Executive Committee of the Board of Trustees of the National Museum of the American Indian.

Section 103(b)(3). Section 103(b)(3) directs the Executive Committee of the Board of Trustees of the National Museum of the American Indian to report to the Board of Trustees of the National Museum of the American Indian on all proposed actions of the Executive Committee and on all actions taken by the Executive Committee.

Section 104(a). Section 104(a) authorizes the Board of Trustees of the National Museum of the American Indian to appoint and fix the compensation and duties of the Director of the National Museum of the American Indian, in consultation with the Smithsonian Institution's Board of Regents. Section 104(a) further authorizes the Board of Trustees of the National Museum of the American Indian to appoint and fix the compensation and duties of such other officers and employees of the National Museum of the American Indian as may be necessary for the efficient administration, operation, and maintenance of the National Museum of the American Indian.

Section 104(b). Section 104(b) provides authority for the Director of the National Museum of the American Indian and two other employees of the National Museum of the American Indian to be appointed and compensated without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service, and chapter 51 and subchapter III of title 5 of the United States Code.

Section 105. Section 105 provides for the temporary transfer of the skeletal remains of American Indians and Alaska Natives that are currently in the possession of the Smithsonian's Institution's

Museum of Natural History to the National Museum of the American Indian upon completion of the building authorized in section 101(c)(1), pending submission of the report required by section 106(b) and a determination by the Congress as to the disposition of such skeletal remains.

Section 106(a). Section 106(a) establishes a Task Force. Section 106(a) further provides that the Task Force is to be composed of nine members.

Section 106(a)(1). Section 106(a)(1) provides that three of the members of the Task Force are to be appointed by the President from a list of nominees submitted by the President pro tempore of the Senate.

Section 106(a)(2). Section 106(a)(2) provides that three of the members of the Task Force are to be appointed by the President from a list of nominees submitted by the Speaker of the House of Representatives.

Section 106(a)(3). Section 106(a)(3) provides that three of the members of the Task Force are to be selected and appointed by the President.

Section 106(b). Section 106(b) establishes the duties and responsibilities of the Task Force.

Section 106(b)(1). Section 106(b)(1) directs the Task Force to conduct a study and make recommendations to the Congress as to the disposition of the Native American and Alaska Native skeletal remains to be transferred to the National Museum of the American Indian pursuant to the directive contained in section 105.

Section 106(b)(2). Section 106(b)(2) directs the Task Force to report to the Congress within one year of the date of enactment of the Act on the findings and recommendations of the study conducted under section 106(b)(1).

Section 106(b)(3). Section 106(b)(3) directs the Task Force to consult with Native American traditional religious leaders in making recommendations as to the disposition of the Native American and Alaska Native skeletal remains described in section 105.

Section 107. Section 107 provides authority for the establishment of regional exhibition facilities of the National Museum of the American Indian.

Section 107(a). Section 107(a) authorizes the Smithsonian Institution's Board of Regents, in consultation and cooperation with the Board of Trustees of the National Museum of the American Indian, to establish exhibition facilities in each of the southwestern, northwestern, midwestern, northeastern, and southeastern regions of the United States, and in the states of Hawaii and Alaska.

Section 107(a)(1). Section 107(a)(1) authorizes the Smithsonian Institution's Board of Regents, in consultation and cooperation with the Board of Trustees of the National Museum of the American Indian, to establish a suitable facility for the purpose of using each such facility as a permanent regional exhibition facility as part of the National Museum of the American Indian. Section 107(a)(1) further authorizes the Smithsonian Institution's Board of Regents, in consultation and cooperation with the Board of Trustees of the National Museum of the American Indian, to prepare such architectural and engineering designs, plans, and specifications of such facilities as may be necessary for the purposes of the Act. Section

107(a)(1) directs that each regional exhibition facility is to be operated and maintained as a regional facility and as part of the National Museum of the American Indian.

Section 107(a)(2). Section 107(a)(2) authorizes the Smithsonian Institution's Board of Regents, in consultation and cooperation with the Board of Trustees of the National Museum of the American Indian, to designate an existing museum or museum-like facility in each of at least three subregions of the region proposed to serve as an affiliate of the National Museum of the American Indian. Section 107(a)(2) further authorizes the Smithsonian Institution's Board of Regents, in consultation and cooperation with the Board of Trustees of the National Museum of the American Indian, to loan Native American objects and artifacts from the collection of the National Museum of the American Indian for temporary display at affiliate museums. Section 107(a)(2) also authorizes the Smithsonian Institution's Board of Regents, in consultation and cooperation with the Board of Trustees of the National Museum of the American Indian, to provide appropriate financial and technical assistance to the affiliate museums for physical improvements and programs.

Section 107(b)(1). Section 107(b)(1) provides that each facility estabished or designated pursuant to section 107 shall provide exhibit space for Native American objects and artifacts and shall also serve as a comprehensive interpretative and educational center to highlight the significant historical, artistic, and cultural achievements of the Native American people of the region or subregion in which such facility is established or designated.

Section 107(b)(2). Section 107(b)(2) provides that it shall be the function of each such facility, among other functions, to sponsor and coordinate a variety of traveling representative exhibits to schools, museums, and to local communities in each region or subregion. Section 107(b)(2) further provides that such exhibits are to stress the rich cultural legacy of the Native American people and increase educational awareness among citizens in each region or subregion.

Section 107(c). Section 107(c) directs the Smithsonian Institution's Board of Regents to establish an advisory council within each region to work with the Smithsonian Institution and the National Museum of the American Indian to establish museum policy with respect to such regional and subregional facilities, and to provide necessary technical assistance. Section 107(c) further directs that each advisory council shall have not less than eleven members and shall be composed of individuals knowledgeable and experienced in the Native American arts and cultures of the region. Section 107(c) establishes that preference for membership on an advisory council shall be given to American Indians and Alaska Natives.

Section 108. Section 108 provides that the faith of the United States is pledged that the United States shall provide such funds as may be necessary for the upkeep of the National Museum of the American Indian and the administrative expenses and costs of operation thereof, including the protection and care of collections acquired by the Board of Trustees of the National Museum of the American Indian or the Smithsonian Institution's Board of Regents, so that the National Museum of the American Indian shall

at all times be properly maintained and collections contained in the National Museum of the American Indian may be exhibited regularly to the general public free of charge.

Section 109. Section 109 authorizes appropriations to carry out the purposes of the Act.

Section 109(a). Section 109(a) authorizes appropriations for fiscal year 1989 in the amount of $3,000,000, and such sums as may be necessary for the succeeding fiscal years to carry out the purposes of the Act.

Section 109(b). Section 109(b) provides that any sums appropriated to carry out the purposes of the Act may be transferred to the General Services Administration. Section 109(b) further authorizes the General Services Administration, in consultation with the Smithsonian Institution, to enter into contracts and take such other action as may be necessary to carry out such purposes to the extent of the sums transferred to the General Services Administration.

Title II—Memorial to the American Indian

Section 201(a). Section 201(a) provides authority for the establishment of a memorial to the American Indian within the structure authorized in section 101(c)(1) which shall honor and commemorate the contributions made by Indian and Alaska Native people to American society.

Section 201(b). Section 201(b) expresses the intent of the Congress that the memorial authorized in section 201(a) and the museum authorized in section 101(c)(1) should be completed within five years after the date of the enactment of the Act.

Section 202(a). Section 202(a) directs the Board of Trustees of the National Museum of the American Indian to establish a Board of Design for the memorial authorized in section 201(a). Section 202(a) further provides that the Board of Design is to consist of seven members, a majority of whom shall be of American Indian or Alaska Native ancestry.

Section 202(b)(1). Section 202(b)(1) establishes the authority of the Board of Design to receive designs for the memorial authorized in section 201(a), and where practicable, to extend a preference to designs submitted by American Indians and Alaska Natives.

Section 202(b)(2). Section 202(b)(2) authorizes the Board of Design, in consultation and subject to the approval of the Board of Trustees of the National Museum of the American Indian and the Smithsonian Institution's Board of Regents, to make a final selection from among the designs submitted.

Section 203. Section 203 provides authority to appropriate such sums as may be necessary for each fiscal year to carry out the provisions of title II.

Title III—Affiliation Agreement

Section 301. Section 301 provides authority for the National Museum of the American Indian to enter into an affiliation agreement with the Museum of the American Indian, Heye Foundation. Section 301 further provides that the affiliation agreement shall be conditioned on the successful execution of the contract authorized in section 302(a)(5).

Section 301(1). Section 301(1) directs that the affiliation agreement shall provide for the right of the National Museum to have access to, select, and display any of the Native American Artifacts and objects from the collection of the Museum of the American Indian, Heye Foundation that the National Museum of the American Indian can use for research or exhibition in the National Museum of the American Indian. Unlike other more typical museum borrowing or loan arrangements, it is the intent of the Congress that the affiliation agreement may provide for the unlimited right of access of the national Museum of the American Indian to Native American objects and artifacts from the collection of the Museum of the American Indian, Heye Foundation, to the extent such access is necessary for research or exhibition in the National Museum of the American Indian. The right of access established under section 301(1) shall be deemed part of the consideration for the benefits received by the Museum of the American Indian, Heye Foundation pursuant to the successful Execution of the contract authorized in section 302(a).

Section 301(2). Section 301(2) directs that the affiliation agreement shall provide for the right of the National Museum of the American Indian to have the first opportunity to purchase any objects or artifacts proposed to be sold or permanently disposed of by the Museum of the American Indian, Heye Foundation. The right established under section 301(2) shall be deemed part of the consideration for the benefits received by the Museum of the American Indian, Heye Foundation pursuant to the successful execution of the contract authorized in section 302(a).

Section 301(3). Section 301(3) directs that the affiliation agreement shall provide that an appointed member of the Board of Trustees of the National Museum of the American Indian shall sit as a voting member on the Board of Trustees of the Museum of the American Indian, Heye Foundation.

Section 301(4). Section 301(4) directs that the affiliation agreement shall provide for a cost-sharing arrangement between the National Museum of the American Indian and the Museum of the American Indian, Heye Foundation, for the exhibition of Native American artifacts and objects from the Museum of the American Indian, Heye Foundation in regional facilities of the National Museum of the American Indian.

Section 301(5). Section 301(5) directs that the affiliation agreement shall provide authority for the Museum of the American Indian, Heye Foundation to have access to and display Native American objects and artifacts from the collection of the National Museum of the American Indian.

Section 301(6). Section 301(6) directs that the affiliation agreement shall provide for an understanding as to the division of funds between the National Museum of the American Indian and the Museum of the American Indian, Heye Foundation for funds that are collected as a result of fund raising efforts to jointly benefit the Native American collections of the National Museum of the American Indian and the Museum of the American Indian, Heye Foundation. Section 301(6) is silent on the issue of whether the affiliation agreement should provide for the division of funds that are raised solely for the benefit of the Native American collection of the Na-

tional Museum of the American Indian or solely for the benefit of the Museum of the American Indian, Heye Foundation.

Section 301(7). Section 301(7) directs that the affiliation agreement shall provide for the right of officials appointed by the National Museum of the American Indian to inspect the Native American collection of the Museum of the American Indian, Heye Foundation, and the right of officials appointed by the Museum of the American Indian, Heye Foundation to inspect the Native American collection of the National Museum of the American Indian, and to report the findings of such inspections to the Congress.

Section 302(a). Section 302(a) authorizes the Administrator of the General Services Administration, notwithstanding any other provision of law, to enter into a contract with the Museum of the American Indian, Heye Foundation, to lease the Old United States Custom House at 1 Bowling Green, in New York City, New York.

Section 302(a)(1). Section 302(a)(1) directs that the contract entered into between the General Services Administration and the Museum of the American Indian, Heye Foundation shall contain a condition that the lease will terminate if the Custom House ceases to be used as a Museum of the American Indian.

Section 302(a)(2). Section 302(a)(2) directs that the contract entered into between the General Services Administration and the Museum of the American Indian, Heye Foundation shall allow for the maintenance of the existing exhibition facility of the Museum of the American Indian, Heye Foundation located at 3753 Broadway, New York, New York.

Section 302(a)(3). Section 302(a)(3) directs that the contract entered into between the General Services Administration and the Museum of the American Indian, Heye Foundation shall provid for the transfer of all property currently located in the research facility of the Museum of the American Indian, Heye Foundation at 3401 Bruckner Boulevard, Bronx, New York, New York, to the Custom House.

Section 302(a)(4). Section 302(a)(4) directs that the contract entered into between the General Services Administration and the Museum of the American Indian, Heye Foundation shall provide for the transfer of all property owned by the Museum of the American Indian, Heye Foundation currently located in the library facility of the Museum of the American Indian, Heye Foundation at Westchester Square, Bronx, New York, to the Custom House.

Section 302(a)(5). Section 302(a)(5) directs that the contract entered into between the General Services Administration and the Museum of the American Indian, Heye Foundation shall be conditioned on the successful execution of a contract between the United States, the Museum of the American Indian, Heye Foundation, the City of New York, and the State of New York, that shall guarantee the financial commitment of a minimum of thirteen million dollars from the City of New York and a minimum of thirteen million dollars from the State of New York for the capital construction costs incurred as a result of the occupancy of the Old United States Custom House by the Museum of the American Indian, Heye Foundation; and that shall guarantee the financial commitment of the City of New York and the State of New York for a percentage of

the total operating costs of the Museum of the American Indian, Heye Foundation in the Custom House.

Section 302(a)(6). Section 302(a)(6) directs that the contract entered into between the General Services Administration and the Museum of the American Indian, Heye Foundation shall be further conditioned on the entering into of the affiliation agreement described in section 301.

Section 302(b). Section 302(b) provides that notwithstanding any other provision of law, and in consideration of the commitments made by the Museum of the American Indian, Heye Foundation pursuant to the affiliation agreement, the lease entered into under the authority of section 302(a) may provide for rental payments at less than fair market value and may be for a term of 99 years.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1722, as amended, as evaluated by the Congressional Budget Office is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 19, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In response to your request, the Congressional Budget Office has prepared the attached cost estimate for S. 1722, the National American Indian Museum and Memorial Act, as ordered reported from the Senate Select Committee on Indian Affairs on April 13, 1988.

If you wish further details on this estimate, please call me or have your staff contact Michael Namian (226–2820).

Sincerely,

JAMES L. BLUM,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1722.

2. Bill title: National American Indian Museum and Memorial Act.

3. Bill status: As ordered reported from the Senate Select Committee on Indian Affairs on April 13, 1988.

4. Bill purpose: The purpose of this bill is to establish within the Smithsonian Institution a museum to be known as the National Museum of the American Indian. The Museum, which is to be constructed on the Mall in the District of Columbia, would permanently house the Native American collection of the National Museum of Natural History and a portion of the collection of the Heye Foundation's Museum of the American Indian. In addition, the bill authorizes the Board of Regents of the Smithsonian to construct within the Museum a Memorial to the American Indian in commemoration of the contributions made by Indian and Alaska Native people to American society. This bill requires subsequent appropriations action.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Start up:					
Autorization level	3	...	...	...	...
Estimated outlays	3	...	...	...	...
Museum planning, design, and construction:					
Estimated authorization level		139	...	...	...
Estimated outlays		35	68	24	12
Museum operation:					
Estimated authorization level					96
Estimated outlays					84
Bill total:					
Estimated authorization level	3	139	...	...	96
Estimated outlays	3	35	68	24	97

The costs of this bill fall within Function 500.

Basis of estimate: S. 1722, the National American Indian Museum and Memorial Act, would authorize the Smithsonian Institution to construct on the National Mall a museum, of at least 400,000 square feet of floor space, to display the history and art of cultures indigenous to North America. In addition, the bill authorizes the construction of a memorial in honor of the American Indian to be built within the Museum. The authorization level for FY 1989 is specified at $3 million while such sums as may be necessary are authorized for the succeeding fiscal years. According to committee staff, it is the intent of the Select Committee on Indian Affairs that the funds authorized for FY 1989 be spent on the "start up" costs of the project. Virtually all of this money would be spent in 1989.

Estimated authorization levels for the planning, design, and construction costs are based on a cost estimate of S. 1722 prepared by the Smithsonian Institution. Outlays for these costs reflect the spending patterns of similar construction projects currently funded by the federal government. Construction of the Museum is assumed to be completed by October, 1993. The public opening is slated for October, 1994. In order to meet this schedule, the Smithsonian estimates that roughly $8 million (6% of the total for planning, design, and construction) would be needed in 1989 for planning and design. Since the bill authorizes $3 million for 1989, CBO assumes that the additional costs will be funded in 1990. This could have the effect of pushing back both the date of completion and the public opening. In addition, unforseen complications such as bad weather and delays in construction could produce the same results.

The estimated authorization level for the costs associated with running the museum is also based on the Smithsonian cost estimate. In the Smithsonian cost estimate, operating costs were estimated in 1988 dollars. Because these costs won't be realized until approximately 1993, the Smithsonian figure has been adjusted for inflation in this analysis. Outlays reflect the current spending patterns of the operating costs of similar programs within the Smithsonian Institution. It should be noted that of the $96 million figure for 1993, roughly $50 million represent one-time costs.

6. Estimated cost to State and local government: S. 1722 authorizes the Administrator of General Services to enter into a contract with the Heye Museum to lease the Old United States Custom House in New York City. Due to its larger size, the U.S. Custom House has been chosen as the new site to display the Heye Foundation collection. The contract mentioned above is to be conditioned on the execution of a contract between the United States, the Heye Museum, the City of New York, and the State of New York. Under the terms of this contract, both the City and the State of New York would guarantee a financial commitment of at least $13 million for capital construction costs incurred as a result of the Heye Museum's occupancy of the new facility.

7. Estimate comparison: The Smithsonian Institution has analyzed the cost impact to the federal government of S. 1722, as ordered reported from the Senate Select Committee on Indian Affairs on April 13, 1988. The $3 million "start up" costs authorized in the bill for FY 1989 were not factored into the Smithsonian Institution's analysis. According to the report, capital costs are estimated at $139 million while operating costs are judged to be $96 million in 1993.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Namian.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committees believe that S. 1722 will have a minimal impact on regulatory and paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committees received testimony from the Smithsonian Institution, a letter from the Department of Justice, and testimony from the National Capital Planning Commission on S. 1722. The Committees also recieved the following correspondence from the Smithsonian Institution. These materials are set forth below:

STATEMENT BY ROBERT MCCORMICK ADAMS, SECRETARY, SMITHSONIAN INSTITUTION

Thank you, Mr. Chairman, I appreciate the opportunity to appear before you today to testify on S. 1722, the primary purpose of which is to create the National Museum of the American Indian on the Mall here in Washington as part of the Smithsonian Institution. The comments of the Institution with respect to specific language and authorizations contained in the bill are embodied in my letter in that regard of November 10, 1987; our views on S. 1723 are contained in a separate letter to you of the same date.

With respect to S. 1722, I would, at the outset, assure you that the Smithsonian's interest in the Museum of the American Indian, Heye Foundation, is driven by a concern for the protection of that Museum's resources for the Nation and for the people whose histo-

ry, culture, and traditions are represented within them. It is also driven by the belief that, working closely with Indian people, the Smithsonian is uniquely able to dedicate this unsurpassed collection, a testament to the cultural heritage of native Americans, to the cultural advancement of contemporary Indian people and to the improved understanding of their past by the entire American public.

The existence of the Museum and its extraordinary collection has been known in the scholarly community for many years. At various times across those years, anthropologists on the staff on the Smithsonian's National Museum of Natural History have served as members of the Museum's Board of Trustees.

The prospect of a more specific relationship between the Museum and the Institution was initially raised by Nelson Rockefeller when, as Vice President, he was a member of the Smithsonian's Board of Regents. At a meeting of the Regents in January 1976, he remarked that in his travels around the country he had been impressed with the thoughtful contributions to discussions that representatives of the Indian community had made, and was mindful of their growing sense of Indian identity and pride. After making reference to the unique scope and pivotal importance of the Heye Foundation collection, as well as to the problems surrounding it at that time, Vice President Rockefeller suggested that there might be an opportunity for the Institution to acquire the collection and to establish a museum devoted to the arts and culture of the Indians of the Americans on the last remaining site on the Mall.

Prompted by the Vice President's interest, the Regents authorized the Secretary to explore the status of the collection and advise them of any viable options. In October 1976, then Secretary Ripley reported that the circumstances surrounding the Museum and its activities were of such a nature that no action by the Smtihsonian was recommended.

In 1980, a series of discussions with the Smithsonian were initiated by several of the Museum's trustees. These discussions centered on the possibility of transferring the collection to Washington, maintaining an independent museum in New York, and developing cooperative scholarly and educational programs with the Smithsonian. Nothing came of these discussions, largely because of renewed efforts to find a suitable location for the Museum in New York.

Naturally, we have been aware of the various proposals put forward, and the status of the Museum has continued to be a matter for discussion by the Regents. We read with interest the opinion issued by the Supreme Court of New York in July of last year with respect to moving the Museum elsewhere, and in the fall of 1986, I visited the Museum for the first time at the suggestion of Barber Conable, the distinguished former Member of Congress from New York who had just stepped down as chairman, but even now remains a member of the Museum's Board of Trustees.

No one who sees the collection can help but be struck by its incredible range, its depth, and its richness. At the same time, however, one is appalled by its inaccessibility to the public, the scholarly community, and Indian people, and fearful of the conditions

under which it is maintained because, over the long term, they can only accelerate the destruction of a collection that is without parallel anywhere in the world.

This is in no sense intended as criticism of the Museum's staff or its Board of Trustees, who appear to have done everything possible to protect the collection within the limits of the Museum's endowment, space, and location. Museums are expensive institutions to run. It is difficult enough under the best of circumstances to raise funds for special exhibitions and publications; it is next to impossible under any circumstances to secure donor support for the core functions of museums, such as the conservation of the collections that distinguish them from all other educational organizations.

It was perhaps the central theme of our national history to have moved the frontier westward across the continent, depriving Indians of their birthright for what was no doubt deeply felt to be a larger purpose. But the hostilities and other excesses accompanying that process of national expansion also were accompanied to a deeply regrettable extent by the destruction of this native American historic heritage.

Native Americans today are increasingly asserting their right for that heritage to be reclaimed and protected as a national responsibility. They do so, not as dwindling numbers of survivors whose communities are on the verge of disappearance, but as vital, growing components of the diverse, multi-ethnic society in which we as a Nation take pride. Many native American communities are small and isolated. Almost all are impoverished relative to "average" living standards in this country. However, there is widespread recognition among these communities of common issues of concern, and these concerns are being increasingly addressed by an emergent national leadership.

With these thoughts as background I would like to share with you some of the very preliminary ideas we have for the Heye Foundation collection, should it come to Washington. To begin with, it would, of course, be viewed by the world's largest museum-going public. Several minutes away in one direction stands the National Gallery of Art, while the National Air and Space Museum immediately adjoins in another. These two are by all odds the most frequently visited museums anywhere. They are followed in order of attendance by two museums further along the Mall, the National Museum of Natural History and the National Museum of American History. It certainly would seem that a national museum of the American Indian has a well-deserved place in this setting.

But the setting is strategic for contemporary native American communities in still another sense. It is located at the end of the Mall, immediately at the foot of Capitol Hill and in that sense directly under the eye of the Congress. As native American groups overcome their cultural and linguistic fragmentation and seek to restore their economically impacted sense of community, is there any better place for the proud display and reaffirmation of what has for so long a time been hidden from view?

With the support of the Congress, I believe it would be possible to erect a Museum on the Mall that would fulfill the potential of this location. It would be unique in many respects within the Smithsonian family of museums, but then diversity is precisely the

hallmark of this family. The collection is so rich that it seems possible to make provision for a truly unparalleled series of traveling exhibitions for other cities, rural communities, and, particularly, Indian reservations and pueblos. Training opportunities built into the museum's program would provide access to the collection for Indian people, as well as others, while Indians working with the collection would add to the sum of our knowledge of it through their identification and interpretation of the material.

The opportunities for scholarship are myriad; it has been said that there is a century of research in the collection, a statement that I have no reason to doubt. Nor do I doubt that the most significant product of that scholarship will be a comprehension and an appreciation of Indian people, far removed from the image that the movie-makers and story-writers have impressed upon us.

The Smithsonian pioneered native American scholarship in the 19th century, in the course of which its own substantial collection was formed. Composed of nearly four million items, representing every geographical area and most tribal groups in this hemisphere, it encompasses more than 133,000 ethnographic objects and over one million archaeological artifacts that document the cultural history of native people of the Americas from the Pleistocene to the present. Within the National Anthropological Archives are nearly 200,000 photographs of American Indian subjects and over two million pages of unpublished materials on Indian ethnography, language, literature, history, and current affairs. Related library holdings total approximately 40,000 volumes, and important film footage on American Indians is in the Human Studies Film Archives.

The value of this material derives not only from its size and scope, but from its age and the quality of documentation associated with it. Most of it was assembled by Smithsonian researchers, who carefully recorded extensive provenience data.

The Southwestern collections were begun by the leading anthropologists of the nineteenth century and are unsurpassed in range, quality, and documentation. The Northwest Coast and Arctic collections are among the earliest and best documented in the world. The large Plains collections provide a vivid record of the struggle of western Indians to defend their land and cultural autonomy against the westward expansion of European America. The massive Mound Exploration project, one of the first systematic archaeological research undertakings in America, produced unique material on the emergence of complex societies in North America, and the River Basin surveys of the 1930s and 1940s yielded incomparable date on the prehistory of much of the United States. We continue to expand these collections, incorporating contemporary American Indian materials, as well as earlier materials from throughout prehistoric and historic periods.

Some areas of duplication exist in the Smithsonian and the Heye Foundation collections. Nonetheless, they complement each other well because the Heye collection has more late 19th and 20th century material, including an outstanding collection of native American painting. The synergy of the two collections suggests undreamed-of possibilites for exhibition, research, and demonstrations of historic and contemporary Indian culture, while their comple-

mentary qualities—each adding to the other's strength—would inspire an exponential increase in American Indian studies.

However, the most distinguishing feature of the Smithsonian concept is the Smithsonian itself: an essentially academic organizations, enjoying broad public and private support. In this setting the Heye Foundation collection would not be isolated, but, rather, would be integral to a intellectual community wherein historians, art historians, physical scientists, and anthropologists—Indian and non-Indian—would use it regularly to examine questions of aesthetics, social relationships, historical development, material properties, and the representation of native Americans by others.

As a bureau of the Smithsonian Institution, a national museum of the American Indian would administer program resources for the collection, preservation, study, and exhibition of its objects and for ancillary education and other activities. In carrying out these responsibilities, it would have access to a variety of Smithsonian programmatic support services, including, among others, the Smithsonian Libraries, our conservation laboratories, the Smithsonian Press, our Traveling Exhibition Service, the Resident and National Associate programs, and the offices of Public Affairs, Telecommunications, Special Events, and Fellowships and Grants. The museum also would be in a position to compete for resources from the Institution's trust-funded Scholarly Studies, Educational Outreach, Major Acquisition, and Special Exhibition programs.

The national scope of such an undertaking is clearly one of its unique features. But within that framework there is a place for a special relationship with the City and State of New York which have been home to the Heye collection for more than seven decades. Such a relationship might take any number of forms, but three principles have persisted across the years and in conversations with a wide variety of people: the preservation of the integrity of the collection wherever it is located; its transfer, in that sense, as an integral unit to Washington; and the maintenance of an appropriate exhibition facility in New York.

To house the activities envisioned, we would plan, as I mentioned earlier, to construct a building of suitable size and design for the public program of the museum at the foot of Capitol Hill on what has become known as "the last site on the Mall." Bounded by Third Street, Independence and Maryland Avenues, Fourth Street, and Jefferson Drive, the site was reserved "for the future public uses of the Smithsonian" by Public Law 94–74 which was approved on August 8, 1975.

We also would expect to construct an additional facility at our Museum Support Center in Suitland, Maryland where objects in the collection not being used for exhibit purposes would be stored in a protective environment, available for research, and undergo conservation treatment as necessary. Given the significance of the collection, we would hope that this building might accommodate what is known in the museum field as "accessible storage" so that members of the public with more than general interests in the material might have the opportunity of seeing it in an off-Mall, non-exhibit setting. Space for research-related activities also is likely to be included in the new structure at the Support Center.

With respect to the facility in New York, our fundamental requirement for access suggests a site that is convenient to public transportation routes and in a part of the city that regularly attracts the city's museum-going public and its visitors from elsewhere. Thereafter, the site should allow for a controlled environment; adequate exhibit space; an auditorium for lectures, performances, and films; administrative areas; visitor services such as restrooms, coat-checking, and a museum shop; and space for research assistance to the public that would include on-line bibliographic data, collection information, and, in time, video displays of objects.

We would expect to operate the New York facility as a branch of the museum in Washington, in much the same manner as our Renwick Gallery operates as a branch of the National Museum of American Art. Significant exhibitions—the equal of those in Washington—would be displayed and activities related to those exhibitions, such as films and demonstrations of historic and contemporary Indian culture, would be a regular feature of its program. Thus, through exhibitions, public programming, and technology the City would have the benefits of a world-class museum without the burdens of maintaining all of the extensive and expensive museum functions that must necessarily support these activities. Furthermore, this approach assures that the Heye Foundation collection, as well as that of the Smithsonian, would be accessible to New Yorkers in ways that heretofore have been impossible.

There are, of course, costs associated with all of these activities. Because of the uncertainties that have surrounded the prospect of the collection moving to Washington, we have not initiated the planning that is essential to determining budgets. However, within the Smithsonian experience there are some comparisons that may be useful in contemplating the four kinds of costs involved in an undertaking of this magnitude.

The first are those associated with construction. While funds have not been available to do even preliminaries studies of new projects, limited work by our staff suggests that the costs of the two buildings in the Washington area may amount to $100,000,000, allowing $75,000,000 for the Mall museum, and $25,000,000 for the Support Center structure.

The second category of costs focuses on providing equipment for and moving people and objects into the new construction and for installing the initial exhibits in the building on the Mall. The costs of these activities is estimated at $14,000,000.

While these first two categories represent one-time costs, the third and fourth are annual items: program and building operation costs. Program costs are those associated with museum administration and traditional museum functions: collecting, caring for, and conserving objects; conducting research on and interpreting them; publishing and/or exhibiting the results of that research; and providing related public programming that further illuminates the themes of research and exhibitions. Assuming that a national museum of the American Indian would be most analogous to the Smithsonian's National Museum of American History, it is instructive to examine a recent budget of the latter. In fiscal year 1987 the American History Museum had available to it approximately $13.4 million from the Institution's Federal appropriation and $2.8

million from Smithsonian trust funds and other sources as fund-raising activities.

Building operation costs are those related to security, custodial services, maintenance, and utilities. Until the new museum building is designed and full information is available on space layout, including the size and configuration of exhibit galleries and other public areas, it is impossible to forecast building costs. However, in fiscal year 1987 these costs for the American History Museum were $4.1 million.

Costs associated with the facility in New York would be driven primarily by the site that is selected. Until that is done—and we would expect to make a selection in consultation with public officials and community representatives—and the program I have described adapted to the site, supportable estimates cannot be provided.

In an era when the need to reduce the Federal deficit is urgent, costs such as those that I have outlined—and which must be adjusted to reflect more accurately out-year expense—are not inconsequential. Certainly they must be weighed carefully in the context of the Federal budget and the desirability of privately-raised funds. In this regard, the Office of Management and Budget advises that the Administration opposes subsections 108 (b), (c), and (d) which would authorize appropriations for construction purposes. While the Administration does not object to the authorizations for construction contained in subsections 103(c) (2), (3), and (4), it believes it appropriate and feasible that actual construction be funded by private sources instead of Federal funds as authorized by subsections 108 (b), (c), and (d). These factors must be carefully considered in the light of an extraordinary opportunity to preserve a collection of monumental significance, make it more accessible to the public than it ever has been, and to share it fully with those whose ancestors created the objects within it.

I would hope, Mr. Chairman, that the deliberation of the committee might be the first step in establishing the National Museum of the American Indian here in Washington and in New York so that in the last decade of this century, as we commemorate the Quincentenary of Columbus' voyages of discovery, we also could begin the process of discovering the enduring heritage of the original people of the Americas.

For the reasons outlined in my letters to the committees of November 10, 1987, the Smithsonian is opposed to Title II of S. 1722 as introduced. Although we certainly are sensitive to the interests of native people in our collection of human skeletal remains, and, insofar as it is possible to do so, are seeking to accommodate those interests, we also are concerned about the misinformation and misunderstanding surrounding that collection. For purposes of clarification I would like to describe its nature and the reasons for its continued maintenance at the Smithsonian's National Museum of Natural History.

The collection consists of some 34,000 specimens, very few of which represent entire skeletons. Approximately 42.5 percent (14,523) of the specimens are the remains of North American Indians, most of which date from pre-historic periods. Those of Eskimo, Aleut, and Koniag populations account for another 11.9 percent

(4,061); Blacks, 5.1 percent (1,744); Whites, 20 percent (6,829); and all others, 20.6 percent (7,033). Almost all have been acquired through approved archeological excavations or as the result of salvage operations, i.e., where remains have been exposed as the result of natural processes such as erosion or man-made incursions such as road building.

Most of the contention over our collection centers on approximately 4,000 specimens acquired by transfer from the Army Medical Museum at the turn of the century. Of these, nearly 3,400 are from pre-historic periods. The remainder—about 600—are from historic times and were assigned tribal identifications by the Army Medical Museum; documentation in our collection lends credence to approximately 270 of those assignments.

The Army Medical Museum was created in 1862 for the purpose of studying and documenting the causes of infection and disease. At that time, the field of pathology was in its infancy and medical specimens for study were not available. Military medical personnel were concerned with anatomical structure and variation, as well as with the serious and often fatal complications of post-traumatic infection following war-related injuries.

From 1862 to 1900, the Army Medical Museum collected examples of human anatomy and pathology from white, black, and Indian populations. The bones of some 3,000 soliders were collected during the Civil War, and in 1868 the Surgeon General of the Army directed medical officers in Indian Country to assist in an effort "to augment the collection of Indian Crania in the Army Medical Museum." Some officers were excessive in their zeal to collect, robbing fresh graves or forwarding battlefield finds and the remains of Indians who died while Army prisoners.

Descendants have an unquestionable claim on the remains of their known ancestors. We are actively engaged in an identification process that will, over the next few months, have us turn to tribal organizations for assistance in locating descendants of people with whose remains we have been entrusted until they can be located. However, I do not want to mimimize the time and patience required to do this job as accurately as possible.

The great difficulties we face will involve individuals who cannot be directly identified. If available information suggests that they died within the relatively recent past, tribal identification may be a possibility even if their direct descendants are not knowable.

The case for the prior right of descendants would appear to be very strong, even if the directness of their descent is only tentatively established. But there is also plausibility to the claims of science. Only the analysis of these specimens, with marvelous new laboratory techniques that are being introduced more and more rapidly, holds out the promise of tracing the exact derivation of recent groups from their more remote ancestors.

The difficulties multiply, in other words, as we shade off from certainty into uncertainty. At what point do the claims of possible descent weaken until the claims of advancement of scientific knowledge outweigh them? As Secretary of the Smithsonian, I am not empowered to surrender national collections to individuals who claim, but cannot demonstrate, their legal standing as descendants.

Ultimately, this may force all of us to recognize a common interest in a legislative solution, but a hasty and premature effort to take this course is likely to be made ineffective by the inherent complexity of the issues to be resolved and by grave Constitutional obstacles. It would seem to be a better approach to proceed by negotiation, beginning with the easier cases and progressing to the more difficult ones. Somewhere in this process I would hope that clarifying principles might emerge on which there could be a high degree of consensus.

The collection of human skeletal remains at the Smithsonian exists to enable scientists to learn about human adaptations and biology by studying living and past populations. The use of modern, historic, and prehistoric material has made it possible for anthropologists to contribute an enormous and diverse array of information about human behavior and biological similarity and diversity.

These contributions fall into four general categories. The first includes information about human diseases and health, most particularly the sub-specialties of paleopathology and epidemiology; the history of specific diseases; and the health of particular populations through time and space. The second category addresses issues of human demography such as population structure through the ages; fecundity and fertility; reconstruction of paleodemography and paleoecology through the use of age and sex data; and historic and prehistoric population movements. In the third category are studies of human behavior and social and political history; the identification of gender-related roles in social structure, status systems, and economics; and information about political alliances of past populations. The fourth category addresses medico-legal applications pertaining to present-day human identification cases for law enforcement agencies.

None of these studies could be done from artifact analysis alone. Information about the biological makeup of a population is essential in understanding its past history. Data about age, sex, and often individual status as well, can come only from skeletal studies.

Understanding the incidence of many diseases in contemporary American populations has been measurably improved by studies of human skeletal remains that have been made by physical anthropologists. In order to uncover clues about the causes of a widespread disease, it is often helpful to look at particular points in time. Several diseases today show peculiar distributions in the United States; physical anthropologists are making contributions to the general epidemiological effort by studying present and past populations.

One example addresses osteoporosis, a weakening of the bones brought about by loss of bone mineral of which calcium is the primary component. This condition primarily afflicts older white American females and leads to spontaneous fractures of bones, particularly in the hip, and to spinal deformities. The causes are thought to be insufficient dietary calcium and low bone mass as a result of generally low exercise levels earlier in life.

By studying bone density in living Eskimo from Alaska to Greenland and in skeletal remains of extinct Eskimo groups, physical anthropologists have made the surprising discovery that both males and females in these groups show market osteoporosis as compared

to American whites and show this condition at much earlier ages. From studies of skeletal remains of past Eskimo groups, it is clear that this is a longstanding pattern in Eskimo biology, and not the result of acculturation or Western influences. However, until recently the usual results of bone weakening, such as fractures and spinal problems, have not been frequent in Eskimo populations.

These observations have important clinical and public health applications. First of all, it seems clear that diets deficient in calcium, such as the traditional high-protein, high-fat Eskimo diet, are the primary cause of osteoporosis. However, vigorous exercise over an individual's lifetime results in relatively heavier bones, which Eskimos also show. Thus, this factor may protect an individual against the usual health problems associated with osteoporosis.

The study also signals an impending public health problem for these native Americans. Until recently, few individuals lived much past 40 or 50 years, while the problems of osteoporosis normally do not appear until the 60's or later. Changes brought about by development in the Arctic have increased the average life-span for Eskimo populations; thus, clinicians and public health officials should forecast a significant rise in the incidence of osteoporosis-related bone disorders, which potentially could exceed the incidence of this condition in the general American population.

Another example is related to degenerative joint disease, a major debilitating condition in the aging American population today. Studies of arthritis in skeletal remains of past human populations, including ancient Britons, Peruvians, Iroquois, Pueblo Indians, and Eskimos, have shown significant differences in the amount, location, and type of arthritis occurring in different populations. These studies indicate that varying levels and types of physical stress effect the distribution of arthritis in joints. Over time there have been changes in the limbs showing the most disease: the upper limbs in most past populations; the legs in modern urban populations. Also, the number of individuals with many diseased joints has changed. Multiple joint involvement was rare in the prehistoric populations studied so far.

There also appear to be differences in the degree to which each sex is affected by multiple joint disease, with modern females showing higher levels then modern males. This pattern suggests that systemic factors affecting only one sex may be involved in the severity of osteoarthritis, an insight which may help focus further research efforts.

Physical anthropologists also have been in a position to test some clinical theories about the causes of osteorarthritis. One current suggestion is that degenerative changes at the joint surface occur when the underlying bone is particularly dense and stiff. The observation noted earlier—that Eskimos of both sexes show high amounts of osteoporosis, the opposite of dense bone—provided one team of anthropologists with the opportunity to test the relationship between bone density and incidence of osteoarthritis. They found that although female Eskimos with osteoporosis tended to show less osteoarthritis, the same did not hold true for males, who tended to show relatively high levels of both.

Other health problems known to affect native American populations in higher than expected amounts also have benefited from

studies of disease occurrence in ancestral groups. One of these is cleft palate and/or cleft lip with is a complex of congenital bone defects causing a wide variety of facial and oral deformities, some of which may be life-threatening in newborns. For some time it has been noted that such defects occur relatively frequently in American Indian children as compared to the general population. It has been suspected that the frequency of this anomaly may be genetically determined. However, studies of skeletal remains of prehistoric Indian populations have not revealed the same incidence of major facial deformities that has been found in living Indian populations in the same geographic region.

Scientists speculate that, although this may mean that cleft palate anomalies are becoming more frequent in living populations, they also may be due to the fact that in previous times infants with obvious defects often died at birth and that the skeletal populations simply do not reflect the actual incidence of the anomaly. The same scientists note that the incidence of related occult defects, i.e., minor clefts which affect only the underlying bone and remain invisible during life, are common in the prehistoric skeletal material, indicating that major cleft palate deformities must also have occurred in these past populations.

With respect to the second category, the prediction of how health and economic factors will affect demographic patterns in contemporary human populations is of major importance to domestic and international policy and planning agencies. In attempting to assess the possible consequences of social and economic change on populations, demographers work not only from studies of modern groups in transition such as hunter-gatherers and peasant agriculturalists, but also are highly dependent on information about demographic trends in past populations which are known to have passed through similar organizational phases. These data are gathered primarily by physicial anthropologists and archeologists who, working with cemetery populations of prehistoric and historic groups, have studied the skeletal remains and economic conditions of these populations.

Specific types of information which such studies have yielded include information on life span and life expectancy in a variety of ecological circumstances; population size; rates of population growth; carrying capacity; the history of population controls in the past; and the relationships between demographic variables, ecological circumstances, and cultural change, especially with regard to urbanization and centralized government. Without access to large skeletal collections of past human populations, such data is impossible to amass. Since societies uninfluenced by modern industrial nations are now virtually non-existent, the evidence about demographic transitions are even more important.

Studies of human skeletal remains have provided us with information about past population movements and relationships that would have been unattainable by any other means, including oral tradition. These based on the form and structure of human teeth have been particularly helpful in uncovering affinities between prehistoric groups. Teeth show a number of minute surface structure variations that are genetically determined and very considerably from population to population.

One such study has shown that early agriculturists in Kurdish Iraq were more similar to Iranian and Indo-European populations than to Natufian and more recent Arab groups. Another dental train study of Sudanese archeological populations resolved a controversy about population stability in the Wadi Halfa region. Contrary to previous theories, no biological evidence supported the idea that cultural changes in the archeological sequence resulted form population in-migration of a genetically and culturally different group. Instead, genetic continuity through more than 1000 years was the more likely circumstance, which means that cultural changes must be explained by mechanisms other than the infusion of new ethnic or racial groups.

Several studies of dental genetic distances, sometimes in concert with linguistic and blood group data, have confirmed the usefulness of using tooth morphology as an estimate of relationships between prehistoric populations for whom teeth may be one of the few remnants. Other research with these techniques has been used to chart and progressive distinctiveness of American Indian groups from Asian and Pacific island populations in an effort to estimate when Amerindian migrants first entered the Western Hemisphere and the dates of separation between various New World groups.

Detailed material studies of human skulls and studies of discrete cranial traits have been used to illuminate the relationships of living human groups, as well as previously unsuspected affinities between living and historic groups. Our current efforts with the Blackfeet of Montana demonstrate how this kind of work can assist native people in dealing with the issues of reburial and repatriation.

In 1986, the Blackfeet inquired about remains in our collection that may be ancestrally related to their tribe. Research into the documentation associated with the collection revealed that 15 crania are of Blackfeet origin and, furthermore, were collected from the Blackfeet Agency in 1892 in an inappropriate manner. During a meeting with Blackfeet officials in February 1987, they expressed their interest in studies that would verify that the remains were, indeed, Blackfeet and, if so, in having them returned to the reservation for burial with a suitable monument. Their insistence on verification was to ensure that only Blackfeet remains were buried. They explained that in 1892 there were open hostilities between themselves and many of their Indian neighbors, and to bury Blackfeet remains next to those of enemies would result in an undesirable mixing of spirits. Plans are now underway for the return of the identified remains, and the Blackfeet anticipate, as do we, that the studies of them can be used to identify Blackfeet remains in other collections.

Our collections of human skeletal remains are also critical to the important medico-legal field of forensic anthropology. Routinely, our physical anthropologists identify for law enforcement officials materials thought to represent skeletonized human remains. Using data gleaned from our collections by scientific research, physical anthropologists determine if the materials are human, how old the person was at death, what sex the individual was, now long ago the person died, with what racial group the person probably identified, the geographic origin of the remains, the living stature and build

of the individual, the post-mortem history of the remains, what diseases or disease treatment the individual had during his or her lifetime, what natural forces acted upon the remains after death (i.e., erosion, sun exposure, rodent and carnivore damage), the nature of foul play that may have been involved, and possibly the individual identification of the remains.

Our collections of American Indian remains are critical to many aspects of this endeavor, especially in documenting population variation in sexual dimorphism and in the aging process, and in the direct estimates of racial affinity. Most of the forensic cases that call upon our expertise turn out to be American Indian in origin, usually represent archeological prehistoric remains that were inadvertently discovered. Early detection that these remains are archeological in origin save law enforcement officials countless hours of time investigating reports of recent missing persons.

Occasionally, skeletal remains of contemporary American Indians are found and identified. In those cases, our collections uniquely provide the data needed to make the identification. As a case in point, the FBI recently brought to us a skeleton submitted by a law enforcement agency in South Dakota. Analysis revealed that the individuals was a young adult male who suffered premature arthritic involvement of the spine and joints, and who may have been killed by massive trauma to the head, as recently as a year before discovery. Comparison with our collections also suggested that the individual probably was an American Indian.

Armed with this information, authorities in South Dakota focused on a missing person from a local reservation that matched the description. Chest x-rays taken of the missing person during life were obtained and compared with those taken of the recovered remains. The comparison revealed an unusual shape of the scapula (shoulder blade) shared by both the missing person and the recovered remains.

To demonstrate the uniqueness of that anatomical feature, our anthropologists studied a large number of scapulae from the American Indian skeletal collections. The study showed that the form of the scapula was, indeed, unique, even among American Indians and, thus, could be used to identify positively the remains as those of the missing person. The research also led to the prosecution and conviction of the assailant.

The human skeletal collections in the Smithsonian's National Museum of Natural History are an irreplaceable resource for scientific research. The Museum is visited by scientists from all over the United States and from other countries as well. Their contributions to knowledge, together with those of Smithsonian scientists, have produced an impressive record that is reflected in hundreds of research publications founded on the collections.

The questions asked and the research strategies used to explore these issues are varied and often multifaceted. Their resolution depends on access to large, well-documented skeletal collections representing diverse populations in order to develop the kinds of quantitative and statistical studies that are the basis of modern scientific investigation. Many questions are addressed in terms of frequency of occurrence and variability within and between populations. Although isolated examples also may provide interesting and

unique data, systematic and comprehensive study of population biology requires adequate numbers in order to accurately describe population characteristics, especially as partitioned by age, sex, and other relevant demographic or socio-economic variables.

Past accomplishments make it all the more essential that these samples of earlier populations be preserved for future analysis, just as unique primary documents are preserved in archives for future readers. Like archival holdings, skeletal collections are a record of the past, and as such must be preserved for future investigators. Information remains to be extracted from these samples as scientific understanding and methods advance.

Techniques are now being developed, for example, that allow more critical evaluation of the relationships between diet and disease through studies which involve bone and tooth compositional analyses for trace element levels and stable isotope ratios. Although it is now possible to assess nutritional dependence on particular dietary items in prehistoric populations through analytical chemistry, the first publication on this topic appeared as recently as 1973. These studies provide important historical information, but also have the wider implications for biomedical research which contributes significantly to our understanding of bone growth and metabolism. Anatomical and physiological issues are complex, and must be viewed both within and between populations having different genetic and environmental backgrounds.

The latest advances in this dynamic field reveal that under some circumstances it is now possible to extract immunoglobulins (proteins that act as antibodies) from bone. The future possibilities suggested by these capabilities cannot be fully appreciated or imagined at this time, even by today's most productive investigators.

Let me summarize this discussion of Title II by saying that prehistoric populations left little evidence of their times with which to educate us. Nonetheless, careful study of their skeletons offers insight into and understanding of them and those times, as well as of ourselves and the times in which we live, that are not available from other sources. To suggest, as sweepingly as Title II does, that these remains should cease in that offering is inconsistent with the Smithsonian's historic mandate "for the increase and diffusion and knowledge" and with the precepts of modern scientific inquiry. An additional difficulty is that the bill fails to take into account the full extent of cultural diversity and individual identity among contemporary Indian tribes. It is merely taken for granted that the Institution, in consultation with Indian tribes, somehow will be able to develop an inter-tribal, ecumenical, archetypal burial ceremony that will have general support.

Having expressed these serious reservations, I should re-emphasize that the Smithsonian does not in any sense deprecate or deny the sensitivity that many Indian people feel with regard to its policies on skeletal collections. We shall continue to meet with those who are dissatisfied with the position taken here, not only to resolve individual claims but, through the accumulating lessons that these provide, to scrutinize and perhaps reconsider its more general features.

In conclusion, Mr. Chairman, we are well aware of the wide range of approaches to the issues associated with the collection of

the Museum of the American Indian, Heye Foundation, and with our collection of human skeletal remains. It seems highly unlikely that any single statement of policy of enactment of legislation can, or, indeed, should, address or resolve all of them. Nonetheless, you may be certain of our willingness to participate, as we already are doing in a number of instances, in efforts to determine and, insofar as it is possible to do so, to accommodate public policy interests.

Mr. Chairman, I shall be glad to respond to any questions that you and other members of the committees may have.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, December 11, 1987.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter expresses the views of the Department of Justice on S. 1722, a bill to authorize the establishment of the National Museum of the American Indian, and for other purposes.

Section 107 pledges that the United States will provide such funds as may be necessary for the upkeep of the proposed museum and the administrative expenses and costs of operation so that the Museum shall at all times be properly maintained and exhibited regularly to the public free of charge. The Department of Justice is concerned that this pledge may be construed to be a contract, binding Congress and authorizing the Claims Court to entertain suits alleging that annual appropriations are insufficient to fulfill this pledge. We recommend that the section be amended to add a proviso stating that no court has jurisdiction to entertain suits to enforce § 107. Alternatively, the committee report could reflect this. A third solution would be to delete § 107 in its entirety, and incorporate a statement regarding the importance of financing the museum's upkeep, and of exhibiting the collection free of charge, into § 102 of the bill. If this were done, § 108 would be sufficient to authorize appropriations to finance the museum's upkeep and free exhibitions, since they would be included in "purposes of the Act."

The Office of Management and Budget has advised this Department that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

JOHN R. BOLTON,
Assistant Secretary General.

STATEMENT OF ROBERT E. GRESHAM, ACTING EXECUTIVE DIRECTOR OF THE NATIONAL CAPITAL PLANNING COMMISSION

Mr. Chairman and members of the committees, my name is Robert E. Gresham. I'm the Acting Executive Director of the National Capital Planning Commission. With me today is Katherine Barns Soffer, General Counsel of the NCPC. Thank you for the opportunity to present the Commission's position on S. 1722.

The National Capital Planning Commission, a Federal agency, was mandated by the National Capital Planning Act of 1952 to serve as the central planning agency for the Federal government in the National Capital. The Commission comments and advises upon the location and construction of Federal public buildings in the National Capital and its environs and has "in lieu of zoning" approval over the construction of Federal public buildings in the District of Columbia.

With respect to memorials, the Commission operates under the recently enacted "Commemorative Works Act of 1986," P.L. 99-652. Section 7 of that act gives our Commission as well as the Department of the Interior and the Commission of Fine Arts approval over the site and design of all commemorative works placed on Federal lands in the National Capital Region.

The Commission supports the concept of a National Museum of the American Indian. It would obviously be an important addition to the Smithsonian Institution's enclave of museums. Such a museum would also be consistent with the Comprehensive Plan for the National Capital, which calls for the extension of cultural activities along Independence Avenue from 3rd to 14th Streets, SW.

In spite of our support for the general concept, however, we would like to raise several concerns about S. 1722. First is the size of the building. Title I, section 103(c)(2) of S. 1722 authorizes, at the minimum, a 400,000-square-foot National Museum of the American Indian on U.S. Government Reservation No. 6. Based upon our staff's evaluation of the site size and the relationship of the site to neighboring buildings, including the U.S. Capitol, we believe that a 400,000-square-foot building would be substantially too large for the designated site. An official of the Smithsonian Institution has also expressed this concern. Although we realize that this project is in the very early stages and that no plans are yet available, we can confidently project that a 400,000-square-foot building would be out of scale with its surroundings, particularly with respect to height. We would recommend, therefore, that the bill contain no reference to a minimum size.

We are also concerned that the proposed museum is to include a memorial in which the skeletal remains of native Americans in the Smithsonian's collections will be interred. The Commission believes that this would set an unfortunate precedent which could lead to other requests for burials on The Mall. We note that the Smithsonian Institution is also concerned about this aspect of the proposed legislation, and we rely on their expertise.

Finally, we would note that pursuant to the Commemorative Works Act the site and design of any memorial would be subject to the approval of this Commission, the Department of the Interior and the Commission of Fine Arts, notwithstanding provisions in the bill authorizing the Board of Design and the Board of Regents to finalize design plans. We would suggest that the Commemorative Works Act be specifically referenced in S. 1722, so as to avoid any confusion over its applicability to the memorial authorized by the legislation.

We have appreciated this opportunity to testify before you today. I would be happy at this time to answer any questions you may have.

SMITHSONIAN INSTITUTION,
Washington, DC, April 12, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington DC.

DEAR MR. CHAIRMAN: Acknowledging your concern to move promptly on the matter, I have given the amendment to S. 1722 proposed by you and Senator Moynihan as careful and comprehensive a review as the time has allowed. Naturally, my reactions to it must be considered somewhat preliminary, since I was not aware of its detailed contents until our discussion this morning. You may be assured that the amendment, together with these comments, will be brought to the attention of the Executive Committee of the Smithsonian Institution's Board of Regents at its forthcoming meeting on April 21. On the other hand, most of the detailed provisions in the amendment, having surfaced in previous drafts, have already been given some consideration by the Regents. Hence it seems possible to sketch with considerable confidence what their general reaction will be.

To begin with, we can only applaud the measures that you and Senator Moynihan envision taking in order to install the Heye Foundation collection in the Custom House in New York. The collection is, as we have all acknowledged on many occasions, a priceless national heritage that has been too long neglected. While there is little doubt in our minds that the collection would better serve the American public, not to speak of the contemporary descendants of its Indian creators, if installed on the Mall in Washington, I recognize that the art of politics is the art of the possible. Our primary objective has always been to see the collection finally given the attention that it deserves.

Having said that, however, I can only reiterate my observation made verbally this morning that an association of the Smithsonian with this undertaking appears to be unwise and unworkable. The reasons for this negative judgment are related to problems associated with collections management, duplication of cost and facilities, museum operations, governance, and financing.

The provisions for, in effect, sharing collections are not necessary because loans between museums for exhibit purposes already constitute a well-accepted system that is essentially equivalent. Furthermore, the language of the propcsed amendment creates serious obstacles and ambiguities with regard to new accessions, deaccessions, and loans to third parties.

Conservation of the Heye collection, for which there is an urgent need, also is seriously impeded. the effect of the measure is to duplicate conservation efforts, with the Smithsonian "having authority" (and, perhaps, an unspecified responsibility) to "preserve, maintain, restore" objects on loan from the Heye museum. Furthermore, as the amendment is drawn, "authority to purchase, accept, borrow, or otherwise provide for the temporary or permanent acquisition of * * * artifacts" from the Heye museum does not assure that any objects requested would, in fact, be made available. Thus, the exhibition program of a museum on the Mall would

not reflect "shared" authority but would be subject to unilateral veto by the Heye Foundation.

The proposal to establish a museum on the Mall parallel to one in New York is unwise because construction of a building primarily to house objects borrowed from another collection cannot be justified. Additionally, the directed transfer of the American Indian collections of the Smithsonian's National Museum of Natural History to the new facility is an invasion of the prerogatives of the Institution's Board of Regents and undermines the scientific operations and the integrity of the Natural History museum.

Since the new museum in Washington would be a derivative, parallel facility, the possibility of mobilizing public support for it, as distinct from reliance on necessarily much larger Federal appropriations, would be crippled. Similarly, since it would be merely an exhibit hall and not the primary repository of a great national collection, the facility would lose much of its symbolic significance for the cultural renaissance of American Indian people. There is, in any case, no justification provided or known for contracting a parallel facility of "at least 400,000 square feet.* * *."

The governance arrangements proposed in the bill also are unwise—indeed, unacceptable—because policy-making authority is given over to a new Board of Trustees and covers all aspects of the Mall museum's education, scientific, exhibit, and conservation functions that properly are matters that must be approached in an integrated fashion for the Smithsonian as a whole and that are by law given to the Board of Regents. The language of Sec. 102 also is ambiguous, in that the degree to which the Trustees' authority is independent of that of the Board of Regents is not fully addressed. I would note, as well, that a thirty-seven member Board of Trustees (not counting ex officio members) largely selected through a political process of Congressional recommendation and appointment by the President is an unwieldy and unsound basis for advice, let alone governance, of a technical museum operation. Furthermore, it is inconsistent with the Smithsonian's charter (20 U.S.C. 41 et seq.) to give to such Trustees the power to appoint, fix the compensation of, and assign the duties of the Director and staff of the new museum on the Mall.

The authority in Sec. 107 for the Smithsonian to establish regional facilities is unwise because of the absence, described previously, of assured access to the Heye Foundation collections which would be the primary source of exhibits for these regional facilities. The amendment requires the Smithsonian merely to serve, in effect, as a middleman in negotiations between the regional facilities and the Heye Foundation museum in New York, an inappropriate and unacceptable role.

The governance arrangements for the regional facilities imply a considerable scale of operations, the costs of which apparently are to be borne by the Institution. Those costs are, at this point, wholly unexamined but surely very large. Unquestionably, they far exceed the $3,000,000 specified in the measure for the Smithsonian's initial participation in all aspects of it. While a cost sharing arrangement with the Heye museum is envisioned, it is unrealistic to expect a private organization, dependent on New York State and City support, to make a material contribution to such expenditures.

Finally, we would question the financial arrangements proposed in the amendment. To the best of our knowledge it has not been established that $26,000,000 contribution for capital costs from New York City and State and an unspecified "percentage of the operating costs of the Heye Museum" are adequate and realistic for the transfer of the Museum to the Custom House, for its successful operation there, and for its continued operation of the existing facility on upper Broadway.

Given the apparent determination of the political structure in New York to maintain the Museum there, together with its commitment of substantial public support on behalf of the Museum, we believe it is appropriate for the Smithsonian Institution to stand aside at this time so that the possibility of making the New York Custom House available to the Heye Foundation can be pursued. You may be assured that we will continue our professional relationships with the Museum in New York. We would also assure you of our sustained commitment to expanding our American Indian programs here in Washington and to training and exhibitions in other parts of the country. We also will continue our very fruitful discussions with tribal representatives in an effort to resolve collection-related issues.

In closing, I also would assure you of our deep appreciation for your time and energy on behalf of American Indian museum matters and the Smithsonian Institution.

With kind personal regards,

Sincerely,

ROBERT MCC. ADAMS,
Secretary.

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC, April 18, 1988.

Hon. ROBERT MCCORMICK ADAMS,
Secretary, Smithsonian Institution,
Washington, DC.

DEAR SECRETARY ADAMS: In an effort to be responsive to your letter of April 12th, as well as to ascertain the manner in which we might continue our joint efforts, I have undertaken a review of the discussions that we have engaged in over the past year relative to the establishment of the National Museum of the American Indian within the Smithsonian Institution, and have, in addition, reviewed the testimony of the Smithsonian Institution that was presented to the joint hearing of the Select Committee on Indian Affairs and the Committee on Rules and Administration on November 12, 1987.

The process of developing legislation is, as you know, a continually evolving and dynamic process that seeks as its objective to achieve solutions to problems which maximize the potential for consensus and agreement among affected communities of interest. It is toward that end, that I have sought to work with the Smithsonian Institution, the Board of Trustees of the Museum of the American Indian, Heye Foundation, the New York Congressional delegation, the Governor of New York, the Attorney General of New

York, and the Mayor of the City of New York to develop a solution that will assure the preservation and enhancement of what is acknowledged to be one of the world's preeminent collections of Native American objects and artifacts. It is my belief that the development of the proposal that was presented to you on April 12, 1988 constitutes what can only be viewed as the first step in the evolution of a legislative initiative that will constitute the charter of the National Museum of the American Indian. In order that we may proceed with the next step, I look forward to meeting with you in the very near future to continue our discussions that began nearly a year ago.

First, I cannot take exception with your description of the world-renowned status of the Smithsonian Institution's own Native American collection, for as you stated in your November 12, 1987 testimony before the committees,

"The Smithsonian pioneered Native American scholarship in the 19th century, in the course of which its own substantial collection was formed. Composed of nearly four million items, representing every geographical area and most tribal groups in this hemisphere, it encompasses more than 113,000 ethnographic objects and over one million archaeological artifacts that document the cultural history of Native people of the Americas from the Pleistocene to the present. Within the National Anthropological Archives are nearly 200,000 photographs of American Indian subjects and over two million pages of unpublished materials on Indian ethnography, language, literature, history, and current affairs. Related library holdings total approximately 40,000 volumes, and important film footage on American Indians is in the Human Studies Film Archives. The value of this material derives not only from its size and scope, but from its age and the quality of documentation associated with it. Most of it was assembled by Smithsonian researchers, who carefully recorded extensive provenience data. The Southwesternern collections were begun by the leading anthropologists of the nineteenth century and are unsurpassed in range, quality, and documentation. The Northwest Coast and Artic collections are among the earliest and best documented in the world. The large Plains collections provide a vivid record of the struggle of western Indians to defend their land and cultural autonomy against the westward expansion of European America. The massive Mound Exploration project, one of the first systematic archaeological research undertakings in America, produced unique material on the emergence of complex societies in North America, and the River Basin surveys of the 1930s and 1940s yielded incomparable data on the prehistoric and historic periods."

As you know, I have viewed parts of the Smithsonian's Native American collection, and I can only suggest that its' substantial and significant nature warrants a museum devoted to its exhibit, research and educational potential. Indeed, by Smithsonian's own account, the sheer volume of items in the Institution's Native American collection exceeds that of the Heye collection by 400 percent.

Further, I strongly agree with your eloquent expression of our mutual vision of what the two collections could mean together. As you stated in your November 12th testimony,

"Some areas of duplication exist in the Smithsonian and the Heye Foundation collections. Nonetheless, they complement each other well because the Heye collection has more late 19th and 20th century material, including an outstanding collection of Native American painting. The synergy of the two collections suggests undreamed-of possibilities for exhibition, research and demonstrations of historic and contemporary Indian culture, while their complementary qualities—each adding to the other's strength—would inspire an exponential increase in American Indian studies."

There can be little doubt that these two collections, brought together, will be unsurpassed and unequalled the world over. It is for this reason, an objective which I know you share, that I have continued to urge all parties to leave bruised egos and perceptions of winners and losers aside, so that we might continue to work together to realize our common goal.

There are many elements to be taken into account in reaching our objective: there are the laws of the state of New York governing the administration of the Heye Foundation trust and the Native American objects and artifacts that are held by that trust; there are court proceedings in which the Attorney General of New York and the Heye Foundation Board of Trustees are involved; there are the concerns of the citizens of New York as they are represented by the Governor of New York and the Mayor of New York City; there are the interests of the Smithsonian Institution's anthropologists; concerns as to governance structures within the Smithsonian system; there are the concerns of museologists and scientists; concerns of American Indian and Alaska Native people over skeletal remains of their ancestors that are currently in the possession of the Smithsonian Institution and other museums around the country; there is a concern that all Americans should be afforded the opportunity to view the contents of these two preeminent and diverse collections regardless of where they may reside; and there is the interest of the world community in having access to an unparalleled gathering of Native American artifacts that provide contour and depth to our understanding of the rich cultural legacy that has been brought into the present by the ancestors of today's American Indian and Alaska Native people.

Perhaps most important among these are the people of the United States and the Indian people. Under the best of conditions, we can offer them a facility in which Americans can begin to learn and appreciate the contributions of their Native American forbearers, and which will let Indians know that they are not forgotten. These are the people we should be concerned with. In the process of achieving this objective, there are bound to be people who feel that they have lost, but the real winners must be the Indians and the people of the United States.

In the realm of politics, this is not a matter that excites my constituency, but I firmly believe that we must act to set aside the dark pages of our relations with the Indian people. This we can do by keeping the beneficiaries of our mutual vision always first and foremost in mind. Accommodations to competing interests must inevitably be considered, but we cannot afford to lose sight of creating an institution where countless generations to come may learn

of the significant contributions that Native American people have made to the cultural fabric of our society.

This museum that we envision is for America. I am confident that all of us can work together, to come to some accommodation of our particular concerns and interests, and to achieve something that will benefit future generations of Americans. I urge you not to stand aside, but to join me in realizing this goal.

I look forward to meeting with you at your earliest opportunity. In the meantime, I hope you will review the enclosed revisions to the April 12th draft of the legislation, as it was reported by the Select Committee, along with explanatory memoranda. I believe that you will find in it, an accommdation of the concerns raised in your letter. I would call your attention specifically to clarifying language which establishes that unlike more typical museum borrowing or loan arrangements, what is required in this legislation is an affiliation agreement between the two museums that would afford the Smithsonian Institution's National Museum of the American Indian virtually unlimited access to the Native American objects and artifacts contained in the collection of the Museum of the American Indian, Heye Foundation. In addition, the draft bill authorizes the Smithsonian to inspect and monitor this collection to insure that it is maintained in accordance with the highest curatorial standards. The National Museum's access and control to the Heye collection must be secured in a legally-binding agreement before any long-term lease of the Custom House is executed under the terms of the legislation. If more needs to be done to insure that this relationship is workable, I urge you to come forward with your comments and recommendations.

I would also direct your attention to a clearer delineation in the responsibilities of the National Museum's Board of Trustees, and the duties of the Board of Regents. Further, as you know, it has never been anticipated that Federal appropriations would represent the sole source of funding for the National Museum. Rather, a nationwide private fund-raising effort is envisioned, and interest in such an effort has already been overwhelming. The contributions of the City and State of New York to the capital construction and operating costs of the Heye Museum, in conjunction with private support that is already pledged, should alleviate concerns over the financial viability of the Heye's occupancy of the Custom House. Of course, it would not be the responsibility of the Smithsonian to raise funds for the New York facility in any event.

The disposition of Native American collections in the National Museum of the American Indian will not preclude anthropological research, but instead enhance the appreciation for the culturally-relevant context in which such research can proceed. These and other changes in the draft bill will, I hope, meet with your approval, and will indicate that there continues to be maximum flexibility in the manner in which the vision that we share, a vision for the future of all Americans, can be realized.

Sincerely,

DANIEL K. INOUYE,
Chairman.

SMITHSONIAN INSTITUTION,
Washington, DC, April 18, 1988.

Hon. WENDELL H. FORD,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Smithsonian Institution is opposed to S. 1722 as it has been ordered reported by the Select Committee on Indian Affairs. As you are aware, the Committee adopted an amendment in the nature of a substitute and two additional amendments thereto. Thus, a new bill has been created that is substantially different in content and purpose from that on which I testified on the 12th of November, 1987. S. 1722 as amended is unwise and unworkable for reasons relating to the management of museum collections, duplication of costs and facilities, museum operations, institutional governance, and financing.

The concept of a shared collection as embodied in Sec. 2(7) would not achieve the purposes described in the two subsections that follow because the derivative nature of the objects available to the museum on the Mall offers not basis for sustained programs of exhibition and research. Language elsewhere in the bill relating to objects and collections creates obstacles and ambiguities with regard to new accessions, deaccessions, and loans to third parties that may make them difficult if not impossible.

Conservation of the Heye collection, for which there is an urgent need, also would be seriously impeded. The effect of the measure would be to duplicate conservation efforts, with the Smithsonian "having authority" (and, perhaps, an unspecified responsibility) to "preserve, maintain, restore" objects on loan from the Heye museum. Furthermore, as subsection (A) of Section 102(a)(2) of the amended bill is drawn, the Smithsonian museum's "authority to purchase, accept, borrow, or otherwise provide for the temporary or permanent acquisition of * * * artifacts" from the Heye museum would not assure that any objects requested would, in fact, be made available. Thus, the exhibition program of a museum on the Mall would not so much reflect the sharing of a collection or preferential authority to access a collection as it would the unilateral veto power of the Heye Foundation.

The proposal to establish a museum on the Mall parallel to one in New York is unwise because construction of a building on the site described in Sec. 101(b), primarily to house objects borrowed from another collection, cannot be justified. The Smithsonian's Board of Regents would not consider use of so priceless a site for such an uncertain objective, and has not, in fact, designated the site for any purpose.

Public Law 94-74, approved August 8, 1975, reserved the Mall site "bounded by Third Street, Maryland Avenue, Fourth Street, and Jefferson Drive in the District of Columbia * * * for the future public uses of the Smithsonian Institution." The second section of that Act is clear in requiring that the Institution may not make any use of the site "unless such use is first approved by the Congress." In his letter of April 25, 1976, to the Committee on Rules and Administration, which was incorporated into the legislative history of the Act, former Smithsonian Secretary Ripley wrote that

"At the appropriate time, plans for the use of the site will be submitted to the Congress and specific authority will be requested."

Since the museum that S. 1722 as amended contemplates for the site would be a derivative, parallel facility to that in New York, the possibility of mobilizing public support for it, as distinct from reliance on necessarily much larger Federal appropriations, would be crippled. Similarly, since it would be merely an exhibit hall and not the primary respository of a great national collection, the facility would lose much of its symbolic significance for the cultural renaissance of American Indian people.

There is, in any case, no justification provided or known for creating a parallel facility of "at least 400,000 square feet" as required by Sec. 101(c)(1) of the bill. Furthermore, it is unlikely that the site described earlier in the measure can accommodate a structure of such size without building fully to the property line and exceeding the height of the National Air and Space Museum by twenty-five feet.

We would note, too, that the requirement of Sec. 101(c)(4) to transfer the American Indian collections of the Smithsonian's National Museum of Natural History to the new facility is an invasion of the prerogatives of the Institution's Board of Regents. Furthermore, such a transfer would undermine the scientific operations and the integrity of the Natural History museum.

The governance arrangements proposed for the Mall museum in the amended bill also are unwise—indeed, unacceptable—because policy-making authority would be given over to a new Board of Trustees and cover all aspects of the Mall museum's education, scientific, exhibit, and conservation functions that properly are matters that must be approached in an integrated fashion for the Smithsonian as a whole and that are by law given to the Board of Regents. The creation of a board whose authority is independent of that of the Board of Regents is inconsistent with the Smithsonian's Charter (20 U.S.C. 41 et seq.), without parallel among our museums, and, as the Institution's vigor and diversity attest, clearly unnecessary. Although it is claimed that the authorities proposed for the new Board of Trustees are identical to those of the Trustees of the Hirshhorn Museum, examination of 20 U.S.C. 76cc demonstrates that they are not.

Furthermore, a forty-one member Board of Trustees, largely selected through a political process of Congressional recommendation and appointment by the President, which heretofore has not been applied to the Smithsonian, is an unwieldy and unsound basis for advice, let alone governance, of a technical museum operation. In addition, giving such Trustees the power to appoint, fix the compensation of, and assign the duties of the Director and staff of the new museum on the Mall is inconsistent with the Charter provision (20 U.S.C. 46) that vests such authority in the Secretary of the Smithsonian Institution.

The authority in Sec. 107 for the Smithsonian to establish or designate regional and subregional facilities is unclear. Under the primary Committee amendment, the previously described absence of assured access to the Heye Foundation collection, which would be the primary source of exhibits for the additional facilities, prevails. Its language would require that the Smithsonian merely serve, in

effect, as a middleman in negotiations on objects and exhibits between the regional facilities and the Heye Foundation museum in New York, an inappropriate and unacceptable role. The amendment to the amendment assumes that the United States will acquire the Museum of the American Indian, Heye Foundation, an assumption that is inconsistent with other aspects of the bill.

The governance arrangements for the regional and subregional facilities imply a considerable scale of operations, the costs of which are to be borne by the Institution. Those costs are, at this point, wholly unexamined, but surely very large and unquestionably far exceeding the $3,000,000 specified in the measure for the Smithsonian's initial appropriation for all activities authorized. While a cost sharing arrangement with the Heye museum is envisioned for exhibits, it is unrealistic to expect a private organization with a modest endowment, dependent on New York State and City for support, to make a material contribution to such expenditures.

Although we recognize that it is beyond our institutional purview, our interest in the successful operation of the Heye museum in the Custom House and at its existing location on upper Broadway, if that is to be the outcome of the present consideration, causes us to question the adequacy of the financial arrangements in the amended bill. To the best of our knowledge a relationship has not been established between the $26,000,000 contribution for capital costs from New York City and State and the actual renovation costs of the Custom House. Similarly, it has been claimed that the City and the State each will contribute twenty-five percent of the annual operating costs of the Heye museum, but we are not aware that such a claim has been confirmed.

S. 1722 as amended raises serious issues about the kinds of institutions the new museums and related facilities will be and how they will serve American Indian people and the public at large. The concept beneath the original version and my testimony of last November suggested an opportunity to create an entirely new kind of American Indian museum. That opportunity will be lost under the bill as amended, and that loss will be far greater than simply that of the symbolic significance of the cultural renaissance of American Indian people.

There is little doubt in our minds that the Heye Foundation collection would better serve the American public, as well as the contemporary descendants of its American Indian creators, if installed on the Mall in Washington. However, the determination of the political structure in New York to maintain the collection there, backed by an apparent commitment of substantial financial support of its behalf, suggests that it is now appropriate for the Smithsonian to stand aside. The issue of making the New York Custom House available to the Museum of the American Indian, Heye Foundation then can be considered on its merits and without the burdensome prospect of additional Federal financial commitments.

The Office of Management and Budget advises that it has no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT MCC. ADAMS,
Secretary.

POSITION STATEMENT OF THE EXECUTIVE COMMITTEE OF THE BOARD OF REGENTS ON A NATIONAL MUSEUM OF THE AMERICAN INDIAN

The Executive Committee, consisting of Messrs. Carlisle H. Humelsine, Chairman, David C. Acheson and Samuel C. Johnson, had an opportunity on June 22, 1988 to visit the Museum of the American Indian, Heye Foundation, and its Research Facility in New York City, and to meet with its Director, Dr. Roland Force, and the Chairman of its Board of Trustees, Mrs. Julia Kidd. Our inspection has strengthened our conviction that these are truly extraordinary collections—an unparalleled resource for the understanding and communication of a wide range of Native American cultures, some extinct but others still living and flowering anew. We warmly welcome the efforts of Senator Daniel Inouye and others to assure a proper home and adequate funding in order for the collections to receive the conservation, wide-ranging exhibits, and scholarly study that they both require and richly deserve.

This positive finding is central. It is a position, we believe, on which all American Indian people, as well as all of those who are concerned with the preservation and study of the rich cultural contributions that American Indians have made, will readily agree. If there are differences in the selection of means by which it can or should be implemented, they must not be allowed to overshadow our full and basic agreement as to the fundamental importance of the collection.

At this point, however, we must recount the manner in which the Regents became involved with the issue of the Heye Foundation collections. In October 1985, a petition to move the collections out of New York State was initiated by the Heye Foundation Trustees without reference to the Smithsonian Institution. Actions that followed seemed to hold some prospect that under appropriate conditions the New York Courts would consider relocation of the collections. In view of the importance of the collections, the Smithsonian accordingly expressed concern about how they could be more adequately housed, conserved and utilized. They were, after all, a cultural resource of major importance, in a field for which the Smithsonian has always had special responsibilities. Hence the alternative possibility was introduced of building a National Museum of the American Indian on the Mall in Washington that would assure the proper care of these collections and house greatly enhanced programs of exhibition, training, and educational outreach. In June 1987, the Trustees of the Heye Foundation supplemented their original petition with material relating to the Smithsonian proposal; the entire matter is still pending before the Supreme Court of New York. It is essential to note that this proposal was entirely predicated on the assumption that a suitable home for the Heye Foundation collection was not an immediate prospect, and might not materialize at all, in New York.

The Executive Committee finds that the arrangement contemplated in S. 1722 requires a fundamental alteration of that assumption. Its different premise, growing out of discussions that Senator Inouye and his staff have carried on with officials in New York, is that the restrictions against moving the collection away from the State of New York are, at least in the near term, practically if not

legally unalterable. For this reason the bill envisions the retention of ownership of the collection by the Heye Foundation in New York and the lease at less than fair market value of the Custom House to the Foundation in order to permit the development there of a great museum devoted to the American Indian.

We believe that this aspect of S. 1722 provides a solution to the needs of the museum. If it receives Congressional approval and proves feasible, it would go a long way toward assuring the preservation and appropriate public display of the Heye Foundation's marvelous collections. However, we are deeply concerned about the other aspect of the proposed legislation, which authorizes the construction of the parallel facility on the Mall in Washington, to be called the National Museum of the American Indian. This proposal reflects the support that has been very widely expressed for demonstrating and symbolically affirming to the entire American public the richness and independence of the American Indian cultural heritage. When coupled with the development of a new museum in New York that retains onwership of most of the relevant collections, however, it requires a reassessment of the Regent's original interest in undertaking the construction and operation of such a museum in Washington.

The following are among the principal considerations leading to this judgment:

In the first place, the more or less simultaneous formation of two major museums, each of potentially 400,000 square feet, would be an immense expansion in a relatively short period that would seriously strain staff and other resources not only in the Heye Foundation but in the Smithsonian Institution and even in the larger field of American Indian cultural studies. There is a persuasive case to be made for the creation of a museum in this field, wherever it may be located, that will meet the needs and possibilities of the Heye Foundation collections. But two museums devoted to this same end will be widely regarded as a wasteful expenditure in a time of budgetary stringency, and may well weaken each other.

Secondly, if we assume the success of the development of the Custom House for this purpose in New York, we must recognize that the case for the construction of a second facility in Washington is greatly weakened. Now or in the future, we must assume that there will be other potential museum uses for the last major construction site on the Mall that are associated with collections that can be permanently acquired. Smithsonian history suggests that no museum should be established without having control of its collections. Financial constraints also enter the picture of priorities. The Smithsonian's own construction plans over the next decade or so include a new facility for the National Air and Space Museum, the comprehensive reconstruction of the old General Post Office, Cooper-Hewitt Museum capital improvements, National Zoological Park projects, and facilities for administrative and technical services; estimates of these and other projects are on the order of $350 million. Furthermore, restoration and repair of the present physical plant is estimated at an additional $200 million. It is doubtful that these other undertakings can or should be substantially postponed in order to proceed more quickly with a National

Museum of the American Indian paralleling a museum of comparable size and scope in New York.

Third, again assuming the installation of the Heye Foundation's collections in the Custom House, we foresee a different ordering of priorities even within Smithsonian programs concerned with American Indians. An alternative Smithsonian focus would be, while improving exhibitions in presently available spaces, on educational outreach and training (especially for American Indians, in museum-related disciplines like collection curation and conservation, archive development, ethno-historical studies, and institution-building). An over-concentration of resources on museum construction and hence on exhibitions could have a negative effect on the balanced, long-term development of a broad understanding of American Indian cultural achievements. It would also be likely to weaken the Smithsonian's contribution to contemporary American Indian cultural expression.

Fourth, we have grave doubts whether it is appropriate to embark on the creation of a major new, Federally-funded museum when the collections that would occupy it are, in the last analysis, the property of a private body operating under the laws of a particular State. This does not involve doubts as to the good will of the present staff and Trustees of the Heye Foundation, repeatedly expressed in a series of cordial and constructive meetings. But the formal affiliation agreement whose terms are currently under discussion necessarily contains so many qualifications and constraints that it differs little from inter-museum cooperative arrangements that proceed even without such an agreement. Costs of implementing the suggested agreement would be very large. Publicly supported museums in Washington must be built with due regard for the very long term. Apart from ordinary personnel turnover, we must consider the long-term possibility of unforeseen political exigencies at a local or State level.

And fifth, we are obligated to consider the possibility that the Heye Foundation's Museum of the American Indian in New York might fail to receive adequate funding after it has been installed in the Custom House. Were this to happen, the Smithsonian could be under enormous pressure to support the New York operations directly. Otherwise the Institution might find itself confronted by the embarrassing prospect of a virtually empty museum with no agreement on the part of New York authorities that the collection then could be permanently transferred to Washington. The Regents have repeatedly expressed their opposition in principle to assuming responsibility for another substantial museum program outside of Washington, excepting only our present important Cooper-Hewitt Museum (the National Museum of Design) in New York City.

The points given above are substantial and compelling reasons for the Regents not to support those features of S. 1722 that are concerned with the construction of a National Museum of the American Indian in Washington. But there is one additional consideration to be taken into account. It has been suggested that the museum in the Custom House and the one on the Mall are absolutely interdependent—that the former has little likelihood of being approved by the Congress without the latter. This is a political judgment, about which we are unprepared to offer a prognosti-

cation. We hope it is incorrect. Insofar as our fiduciary responsibility must be to the Smithsonian Institution, we cannot recommend that the Regents support the construction of a Mall museum under S. 1722. We do offer every encouragement, however, that the proposal to transfer the Custom House to the Museum of the American Indian, Heye Foundation, be expeditiously brought forward for Congressional action.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committees do not anticipate any changes in existing law as a result of enactment of S. 1722.

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